

**FREEDOM OF INFORMATION
AND
PRIVACY ACTS**

**SUBJECT: MANUAL OF INVESTIGATIVE
OPERATIONS AND GUIDELINES (MIOG)**

Volume: 2 PART 1



FEDERAL BUREAU OF INVESTIGATION

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VOLUME II

PART I

*Manual of
Investigative
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Manual of Investigative Operations and Guidelines
Part I

PAGE 102 - 1

SECTION 102. VOORHIS ACT

102-1 STATUTE

Title 18, USC, Section 1386.

EFFECTIVE: 01/31/78

102-1.1 Registration of Certain Organizations

This act provides that the following organizations shall be required to register with the Attorney General:

"Every organization subject to foreign control which engages in political activity;

"Every organization which engages both in civilian and military activity and in political activity;

"Every organization subject to foreign control which engages in civilian military activity; and

"Every organization, the purpose or aim of which, or one of the purposes or aims of which, is the establishment, control, conduct, seizure, or overthrow of a government or subdivision thereof by the use of force, violence, military measures, or threats of any one or more of the foregoing."

EFFECTIVE: 01/31/78

102-2 DEPARTMENTAL POLICY

Very rarely has the Department authorized prosecution under this statute.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 102 - 2

EFFECTIVE: 01/31/78

102-3 VENUE

Where the violation is failure to register, venue will lie only
in the District of Columbia.

EFFECTIVE: 01/31/78

102-4 CHARACTER - VOORHIS ACT

EFFECTIVE: 01/31/78

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Manual of Investigative Operations and Guidelines
Part I

PAGE 103 - 1

SECTION 103. INTERSTATE TRANSPORTATION OF STOLEN LIVESTOCK

103-1 STATUTES

Title 18, USC, Sections 667, 2311 (in part), 2316, and
2317

EFFECTIVE: 07/11/85

103-1.1 Section 667 - Theft of Livestock

"Whoever obtains or uses the property of another which has a value of \$10,000 or more in connection with the marketing of livestock in interstate or foreign commerce with intent to deprive the other of a right to the property or a benefit of the property or to appropriate the property to his own use or the use of another, shall be fined not more than \$10,000 or imprisoned not more than five years or both."

EFFECTIVE: 07/11/85

103-1.2 Section 2316 - Transportation of Stolen Livestock

"Whoever transports in interstate or foreign commerce any livestock, knowing the same to have been stolen, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

EFFECTIVE: 07/11/85

103-1.3 Section 2317 - Sale or Receipt of Stolen Livestock

"Whoever receives, conceals, stores, barters, buys, sells or disposes of any livestock, moving in or constituting a part of interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 103 - 2

EFFECTIVE: 07/11/85

103-1.4 Section 2311 - Definitions

"... 'Livestock' means any domestic animals raised for home use, consumption or profit, such as horses, pigs, llamas, goats, fowl, sheep, buffalo, and cattle, or the carcasses thereof." |

EFFECTIVE: 10/24/94

103-1.5 Elements (Title 18, U.S. Code, Sections 2316 and 2317)

(1) That livestock were stolen.

(2) That the livestock were transported in interstate or foreign commerce.

(3) The person transporting the livestock knew them to have been stolen; or, the person receiving, concealing, storing, bartering, selling, or disposing of the livestock knew them to have been stolen. |Pursuant to Title 18, USC, Section 21, the element of guilty knowledge may also be established by proof that the defendant believed that the livestock were stolen, after or as a result of an official representation as to the nature of the property (see MIOG, Part II, 1-1.12).|

EFFECTIVE: 10/23/95

103-1.6 Elements (Title 18, U.S. Code, Section 667)

(1) Unlawfully obtaining the property of another having a value of \$10,000 or more.

(2) Marketing livestock in interstate or foreign commerce.

(3) Intent to deprive or defraud another through larceny, embezzlement, misapplication, fraud, deception or conduct of a similar

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 103 - 3

nature.

EFFECTIVE: 07/11/85

103-1.7 Gist of the Offense

Under Section 667 the gist of the offense is unlawfully obtaining the property of another having a value of \$10,000 or more, or its use, in connection with the marketing of livestock in interstate or foreign commerce. The property could be the livestock itself, or any money, checks, or other property paid to acquire the livestock. The deprivation need not be permanent. Thus, Section 667 can reach the situation involving a defrauded purchaser who does not receive the livestock he/she has paid for, as well as the situation involving a defrauded seller who does not receive payment for the livestock he/she has sold and delivered.

EFFECTIVE: 07/11/85

103-2 INVESTIGATIVE PROCEDURE

(1) Definitely establish actual theft has occurred.

(a) Many reported thefts are results of straying.

(b) If information obtained from other than owner, interview owner or owner's representative.

(c) If scene of theft located, make complete crime scene search with attention directed to [REDACTED]

b2
b7E
(2) If facts indicate a violation, obtain information regarding owner's brand, evidence of ownership, tattoos, ear tags, description of the livestock, peculiar markings, full particulars surrounding the theft, and the names and descriptions of suspects and of any vehicles they may utilize or that were seen in the area of the theft. Some states have laws requiring owners to designate a brand and register same. Others have laws providing that a certified copy of a recorded brand is prima-facie evidence of ownership.

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 103 - 4

(3) If violation indicated

(a) Immediately notify state brand inspector in state where livestock taken, and request that inspector's organization be alert for livestock bearing owner's brand, for activities of suspects, and for vehicles that may have been seen in area of the theft.

(b) State brand inspectors, and/or local law enforcement officers, frequently have authority to stop and inspect livestock in transit.

(c) Some states require that livestock being transported from or into these states have permits requiring such transportation.

b2
b7E
[REDACTED]
(e) Brand inspectors often have book listing all registered brands for comparison purposes.

(4) If facts indicate stolen livestock may be disposed of through large stockyard, set out leads for offices covering stockyards or other large concentration points of livestock, and request that stops be placed. Same holds true for regional livestock auctions.

(5) If possibility exists stolen livestock slaughtered and sold to butchers

(a) Determine through sources and local law enforcement agencies which butchers may deal in stolen meat, and

(b) Determine from meat-packing house and their salespeople whether any customer has had sudden, unexplained decrease in purchases.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 103 - 5

103-3 PRESENTATIONS TO U.S. ATTORNEY'S OFFICE

(1) If livestock obtained through the giving of fraudulent check or security, present facts to USA for prosecutive opinion prior to extensive investigation.

(2) If facts indicate transportation of portions of slaughtered livestock, obtain opinion of USA to determine if such portions fall within statutory term "carcass."

(3) Present facts to USA in single animal theft cases to determine if USA will prosecute such a case. If not, close case administratively and notify brand inspectors and/or local law enforcement agency.

EFFECTIVE: 07/11/85

103-4 REPORT WRITING RULES

(1) Forward to FBIHQ copy of any prosecutive summary report prepared in this classification of investigation for the USA's Office, utilizing current Bureau guidelines for the preparation of such reports.

(2) No report need be forwarded under any other circumstances unless it is determined to be the most logical means to disseminate the results of investigation accumulated, or when it is decided that a report is the best means to disseminate such results to other Federal agencies through FBIHQ rather than via an LHM.

EFFECTIVE: 07/11/85

103-5 VENUE

In an district from, through, or into which such livestock have been transported (Title 18, USC, Section 3237).

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Manual of Investigative Operations and Guidelines
Part I

PAGE 103 - 6

103-6 CHARACTER - INTERSTATE TRANSPORTATION OF STOLEN|LIVESTOCK|

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Sensitive
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Manual of Investigative Operations and Guidelines
Part I

PAGE 105 - 1

SECTION 105. FOREIGN COUNTERINTELLIGENCE | INVESTIGATIONS |

105-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the |105| classification is set forth
in a separate FBI manual, the |NATIONAL FOREIGN INTELLIGENCE PROGRAM
MANUAL (NFIPM). |

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 109 - 1

SECTION 109. FOREIGN POLITICAL MATTERS

109-1 FOREIGN POLITICAL MATTERS

This is a control file utilized by FBIHQ and field offices as a repository for intelligence information of value on the above subject.

Information in this file is broken down by Country.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 110 - 1

SECTION 110. FOREIGN ECONOMIC MATTERS

110-1 FOREIGN ECONOMIC MATTERS

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 111 - 1

SECTION 111. FOREIGN SOCIAL CONDITIONS

111-1 FOREIGN SOCIAL CONDITIONS

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 112 - 1

SECTION 112. FOREIGN FUNDS

112-1 FOREIGN FUNDS

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 113 - 1

SECTION 113. FOREIGN MILITARY AND NAVAL MATTERS

113-1 FOREIGN MILITARY AND NAVAL MATTERS

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Information in this file is broken down by Country.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 115 - 1

SECTION 115. BOND DEFAULT

115-1 BACKGROUND

| The Bail Reform Act of 1984, enacted October 12, 1984, as part of the Comprehensive Crime Control Act of 1984, replaced Sections 3141-3151 of Title 18, United States Code. Sections 3141-3149 were later amended in the Criminal Law and Procedure Technical Amendments Act of 1986, enacted November 10, 1986. Sections 3142 and 3143 were amended, and 3151 added, in Public Law 100-690, enacted November 18, 1988. The new provisions are designed to assure a forthright means of detaining a dangerous offender, and an offender who is likely to flee while pending trial and/or during appeal. Specifically, the new provisions: (1) allow judges and magistrates to consider danger to the community or individuals in setting pretrial release conditions other than financial conditions; (2) permit the imposition of additional types of release conditions, including probationary-type supervision, and permit the rejection of bail money if its source is illegal income; (3) allow pretrial detention of a defendant if no condition of release will assure his/her appearance or ensure the safety of specific individuals or the community in general; (4) provide procedures for revoking the release; (5) bar post-sentence release unless a defendant proves that such release would not pose flight or safety risks and that the case is likely to be reversed on appeal; and (6) raise penalties for bail jumping and provide mandatory penalties for crime committed while on pretrial release. (See 115-3, "Policy," and MIOG, Part II, Section 21-28, regarding the Attorney General guidelines for instructions on the FBI's conduct of these investigations.)|

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Manual of Investigative Operations and Guidelines
Part I

PAGE 115 - 2

115-2 PRINCIPAL STATUTES AND PENALTIES

| The following is a list of statutes pertaining to this section:

- Section 3141. Release and detention authority generally
- Section 3142. Release or detention of a defendant pending trial
- Section 3143. Release or detention of a defendant pending sentence or appeal
- Section 3144. Release or detention of a material witness
- Section 3145. Review and appeal of a release or detention order
- Section 3146. Penalty for failure to appear
- Section 3147. Penalty for an offense committed while on release
- Section 3148. Sanctions for violation of a release condition
- Section 3149. Surrender of an offender by a surety
- Section 3150. Applicability to a case removed from a state court
- Section 3151. Refund of forfeited bail
- Section 3152. Establishment of pretrial services
- Section 3153. Organization and administration of pretrial services
- Section 3154. Functions and powers relating to pretrial services
- Section 3155. Annual reports
- Section 3156. Definitions |

EFFECTIVE: 01/22/90

| 115-2.1 | Deleted |

EFFECTIVE: 01/22/90

| 115-2.2 | Deleted |

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 115 - 3

115-2.3 [Deleted]

EFFECTIVE: 01/22/90

115-3 POLICY

(1) By Department of Justice directive dated 8/11/88, the FBI was relieved of the responsibility for handling bond default investigations, in favor of such cases being handled by the U.S. Marshals Service (USMS).

(2) In cases where the FBI is the originating agency and the defendant fails to appear while released on bond, the FBI shall retain jurisdictional responsibility.

(3) If and after the defendant is adjudicated guilty and he/she remains on bond and fails to appear for further court proceedings or fails to surrender to begin serving his/her sentence, the USMS shall assume investigative responsibility.

(4) If, after 8/11/88, a new bond default subject within the primary jurisdiction of the USMS also becomes an FBI substantive fugitive, of course, we will seek his/her apprehension under the substantive case, but "OO" must advise the USM in the district holding the warrant of its fugitive involvement and notify USM's office promptly upon apprehension. This notification will, of course, not change the existing procedure of advising the USM in the district where the subject is located.

(5) Should, after 8/11/88, a bond default violator within the responsibility of the USMS become a suspect in an FBI substantive case and "OO" desired to actively seek the subject's apprehension under the ongoing substantive matter, this may be done provided the USMS is notified and the fugitive aspects of the case are an FBI-USMS coordinated effort. Of course, when the fugitive is apprehended or eliminated as a suspect in the substantive case which no longer demands FBI fugitive involvement, the appropriate USM must be notified.

(6) If any subject of an existing USMS responsibility bond default matter is wanted as a fugitive in an FBI substantive case, the existing "115" case should be consolidated and handled as a dual character substantive case.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 115 - 4

(7) If for some reason it should be imperative for an "OO" to initiate a new "115" fugitive investigation involving a non-FBI case, advise FBIHQ on a UACB basis of the facts demanding FBI involvement.

(8) When a bond default case has been referred to and accepted by an office for investigation, promptly ensure that the proper process has been issued and is currently outstanding.

(9) The process issued will be a bench warrant charging the subject with either bond default violation of Title 18, USC, Section 3146, or failure to appear. A failure to appear warrant does not have a USC citation and is not capable of Federal prosecution. It is merely a means by which the subject is ordered arrested and brought before the court to face the original underlying charge for which subject made bond.

(10) Even if the bench warrant issued charged the subject with failure to appear, the proper Bureau character is bond default and failure to appear should not be utilized.

(11) Since a failure to appear warrant is not capable of Federal prosecution, the USA should be promptly contacted for a prosecutive opinion while the subject is in fugitive status for the purpose of indictment for bond default, Title 18, USC, Section 3146, or to attempt to secure future prosecution for bond default upon subject's ultimate apprehension.

(12) In the above instance, the USA may decline prosecution of the subject for bond default while in fugitive status or indicate USA will not attempt to prosecute him/her for bond default when apprehended. As long as the failure to appear warrant remains outstanding, the Bureau's fugitive investigation must continue in order that the subject may be ultimately prosecuted on the underlying Federal charge.

(13) Although a bond default violation is primarily a fugitive-type investigation, it is also a Bureau substantive offense capable of Federal prosecution. During the fugitive investigation, evidence should be obtained to establish his/her willful failure to appear. In addition, upon the subject's apprehension he/she should be interviewed regarding the bond default offense to ensure successful prosecution.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 115 - 5

EFFECTIVE: 01/22/90

115-4 OFFICE OF ORIGIN

(1) Deleted

(2) Where the subject, charged with a Bureau substantive violation, is arrested by the office of origin or an auxiliary office, and is released on bond and fails to appear within the office of origin's territory as required, that office will continue to act as the office of origin since the bond default violation occurred within their territory.

(3) Where the subject, charged with a Bureau substantive violation, is apprehended by an auxiliary office, and is released on bond and fails to appear within their territory as required, the following developments may occur which shall determine who shall act as the office of origin.

(a) Since the substantive warrant issued for the subject has been executed upon subject's apprehension by the auxiliary office, it is no longer outstanding. If the office of origin's USA causes the executed warrant to be reissued or a new warrant to be issued for the subject charging him/her with the original substantive offense, that office shall continue to act as the office of origin regardless if the auxiliary office's USA causes a bond default or failure to appear warrant to be issued for the subject.

(b) If the office of origin's USA does not cause the original executed warrant to be reissued or a new warrant to be issued for the subject charging subject with the original substantive offense, the apprehending auxiliary office will assume office of origin based on the bond default or failure to appear warrant issued in their territory.

(4) In those rare situations, where for whatever reasons the original warrant is not reissued or a new warrant issued within the office of origin's territory and a bond default or failure to appear warrant is not issued within the apprehending auxiliary office's territory, the full details should be promptly furnished FBIHQ via routine teletype by the office of origin for presentation to the Department of Justice for a final determination.

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 115 - 6

EFFECTIVE: 01/22/90

115-5 VENUE

Prosecution shall be in the district in which the bond default offense was committed.

EFFECTIVE: 09/10/79

115-6 CLASSIFICATION

(1) When the investigation of the underlying offense was not originally conducted by the Bureau the classification is 115. These should be very infrequent. Approval for same required from FBIHQ.

(2) If the bond default offense arose from a Bureau investigation, it should be handled under the substantive classification.

EFFECTIVE: 09/10/79

115-7 REPORTING PROCEDURES (See MIOG, Part I, 25-10, 76-1.8, 76-2.9, 76-3.13, 88-12, 115-7 & Part II, 21-2.9.)

(1) Upon the initiation of a bond default investigation and the placing of its subject in a fugitive status, two copies of an FD-65 should be promptly forwarded to FBIHQ, and one copy submitted directly to the Savannah Information Technology Center (SITC), by the office of origin. Upon the fugitive's apprehension or location, the locating office must promptly notify FBIHQ by teletype (at least ROUTINE in precedence), followed by Form FD-515 entry into the Integrated Statistical Reporting and Analysis Application (ISRAA). The office of origin must ensure that all auxiliary offices are notified by teletype to discontinue.

(2) One copy of a Prosecutive Report should be submitted to FBIHQ upon the authorization of prosecution by the USA, or when a specific request for such report is made by the USA or FBIHQ.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 115 - 7

(3) In reporting the results of prosecutive action following the submission of a Prosecutive Report, while Form R-84 (if applicable) is to be forwarded to FBIHQ, a separate letter (airtel with LHM if dissemination desired) should also be submitted detailing the final disposition of each subject. The required letter should note that Form FD-515 has been entered into the ISRAA.

EFFECTIVE: 10/11/94

115-8 CHARACTER

(1) BOND DEFAULT, when the investigation of the original underlying offense was not conducted by the Bureau. [These should be very infrequent. Approval for same required from FBIHQ.]

(2) Substantive offense - BOND DEFAULT, if the bond default offense arose from a Bureau substantive investigation such as bank robbery, it is a dual character. BANK ROBBERY - BOND DEFAULT.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 116 - 1

SECTION 116. SPECIAL INQUIRY - DEPARTMENT OF ENERGY;
SPECIAL INQUIRY - NUCLEAR REGULATORY COMMISSION

116-1 GENERAL INSTRUCTIONS

These instructions supplement those contained in Part II,
Section 17 of this manual, and deal with cases other than those
referred to FBIHQ by OPM.

EFFECTIVE: 03/23/89

116-1.1 Deleted

EFFECTIVE: 03/23/89

116-1.2 Deleted

EFFECTIVE: 03/23/89

116-2 AUTHORITY

See Part II, Section 17-1, of this manual for the
authority to conduct these investigations.

EFFECTIVE: 03/23/89

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 116 - 2

116-3 PRIVACY ACT - REQUIREMENTS

(1) When interviewing individuals under this classification for information concerning themselves or their activities, the interviewing Agent must follow the procedures described in Part I, 190-5 (2) and (3) of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual.

EFFECTIVE: 03/23/89

116-4 NATURE OF CASES

All Department of Energy (DOE) and Nuclear Regulatory Commission (NRC) cases are personnel background investigations conducted pursuant to specific written request of the DOE or NRC for persons who are being considered for employment with DOE or NRC or with a DOE or NRC contractor, or are being reinvestigated for their current position.

EFFECTIVE: 03/23/89

116-5 TYPE OF CASES

(1) Full Field Investigation (FFI) - Conducted when no previous background investigation (BI) has been done concerning the individual and covers the past fifteen years as set forth in Part II, Section 17 of this manual.

(2) Update Investigation (UI) - Conducted when there has been a previous BI concerning the individual completed by the FBI or another Government agency which uses the same investigative standards. FBIHQ will determine whether or not an update investigation is appropriate and will advise the field as to the period of time which the BI should cover. Any areas not covered during the previous BI will be set out by FBIHQ in the opening communication for investigation so as to render total coverage commensurate with present standards.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 116 - 3

EFFECTIVE: 03/23/89

116-5.1 Sensitive Compartmented Information (SCI) Cases

Individuals that the DOE has designated as being considered for SCI access are subject to investigation similar in scope to an FFI. However, the scope of these background investigations covers only the last 15 years. SCI cases require that the following checks should also be conducted:

(1) Verify the applicant's date and place of birth at the Bureau of Vital Statistics. Verify naturalization (if applicable);

(2) Check the records of the Immigration and Naturalization Service on any immediate family members (described as spouse, parents, siblings, and children) or current cohabitant(s) (residents of same household, living in spousal-type, or roommate type, relationships, but not domestic/other employees) who are United States citizens other than by birth, or who are resident aliens. (In view of time constraints, naturalization verification through review of court records may prove to be more time efficient.)

(3) Review military records, regardless of military service falling within the 15-year scope.

EFFECTIVE: 07/23/90

116-6 DEADLINES

(1) Deadlines in these cases generally will be set from the date of the opening communication as follows: Banded in FFIs will be 30 calendar days; Banded in UIs will be 60 calendar days. Occasionally, the client agency will request expedite cases in which the Banded will be 21 calendar days.

(2) Refer to Part II, 17-3.5 of this manual for specific instructions regarding those situations in which circumstances preclude reporting the complete investigation of a case on or before the deadline.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 116 - 4

EFFECTIVE: 07/23/90

116-7 ORGANIZATION OF REPORT

Reports should be organized to follow the general sequence presented in Part II, Section 17-6, which outlines the scope of FFIs. Reports are directly disseminated to DOE and NRC and, therefore, should be free of typographical errors and administrative information.

EFFECTIVE: 07/23/90

116-7.1 Interviews

(1) While FBIHQ will not specifically state the number of interviews to be conducted, a sufficient number of interviews of persons knowledgeable about applicant/employee must be conducted to cover the individual's entire adult life in an FFI or during the period since the last investigation in UI cases.

(2) Field offices are also expected to conduct whatever number of interviews are required to thoroughly and completely address any unfavorable information or issues developed during an investigation.

EFFECTIVE: 07/23/90

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 1

SECTION 117. ATOMIC ENERGY ACT OF 1954
(SEE MIOG, PART I, SECTION 279.)

117-1 STATUTES

Title 42, USC, Sections 2011-2284 (AEA of 1954, as amended).

Title 18, USC, Section 831 (Prohibited Transactions Involving Nuclear Materials). (See MIOG, Part I, 46-1.11(2) and 249-1.)

EFFECTIVE: 05/25/93

117-2 JURISDICTION

The FBI shall investigate all alleged or suspected criminal violations of the AEA of 1954, as amended (Section 2271), and of Title 18, USC, Section 831.

EFFECTIVE: 05/25/93

117-3 DEFINITIONS

(1) "Atomic Weapon" - any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principal purpose of which is for the use as, or for the development of, a weapon, a weapon prototype, or a weapon test device. (Section 2014(d))

(2) "By-product Material" - (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 2

utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source. (Section 2014(e))

(3) "Production Facility" - any equipment or device determined by rule of the Department of Energy (DOE) or Nuclear Regulatory Commission (NRC) to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or any important component part especially designed for such equipment or device as determined by the DOE or NRC. (Section 2014(v))

(4) "Restricted Data" - all data concerning the design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 2162 of the Act. (Section 2014(y))

(5) "Source Material" - uranium, thorium, or any other material which is determined by the DOE or NRC pursuant to the provisions of the Act to be source material; or ores containing one or more of the foregoing materials, in such concentration as the DOE or NRC may by regulation determine. (Section 2014(z))

(6) "Special Nuclear Material" - plutonium, uranium enriched in isotope 233 or in isotope 235, and any other material which the DOE or NRC, pursuant to the provisions of the Act, determines to be special nuclear material; or any material artificially enriched by any of the foregoing, but does not include source material. (Section 2014(aa))

(7) "Utilization Facility" - any equipment or device, except an atomic weapon, determined by rule of the DOE or NRC to be capable of making use of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect public health and safety, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or any important component part especially designed for such equipment or device as determined by the DOE or NRC. (Section 2014(cc))

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 3

EFFECTIVE: 05/25/93

117-4 | VIOLATIONS - Title 42, USC, Sections 2011-2284
(Atomic Energy Act of 1954, As Amended)

(1) Section 2077 (Unauthorized Dealings in Special Nuclear Materials):

It shall be unlawful for any person to possess or transfer any special nuclear material; transfer or receive any special nuclear material in interstate commerce; export from or import into the United States any special nuclear material; or directly or indirectly engage in the production of any special nuclear material outside of the United States except as authorized by DOE or NRC. (See entire text for exceptions.)

(2) Section 2092 (Unauthorized Dealings in Source Material):

Unless authorized by a general or specific license issued by DOE or NRC, no persons may transfer or receive in interstate commerce, transfer, deliver, receive possession of or title to, or import into or export from the United States any source material, except that licenses shall not be required for quantities of source material which, in the opinion of DOE or NRC, are unimportant.

(3) Section 2111 (Unauthorized Dealings in By-Product Material):

No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any by-product material, except to the extent authorized by specific or general licenses issued by DOE or NRC. (See entire text for exceptions.)

(4) Section 2098 (Public Lands - Conflict of Interest):

No individual, corporation, partnership, or association which had any part, directly or indirectly, in the development of the atomic energy program may benefit by any location, entry, or settlement upon the public domain made after such individual, corporation, partnership, or association took part in such project, if

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 4

such individual, corporation, partnership, or association, by reason of having had such part in the development of the atomic energy program, acquired confidential official information as to the existence of deposits of such uranium, thorium, or other materials in the specific lands upon which such location, entry, or settlement is made and subsequent to the date of the enactment of this act made such location, entry, or settlement or caused the same to be made for his, or its, or their benefit.

(5) Section 2122 (Prohibitions Governing Atomic Weapons):

It shall be unlawful for any person to transfer or receive in interstate or foreign commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon, except as may be authorized by DOE or NRC pursuant to the provisions of the act.

(6) Section 2131 (Equipment Prohibitions):

It shall be unlawful for any person within the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export any utilization or production facility except under and in accordance with a license issued by the DOE or NRC.

(7) Section 2274 (Communication of Restricted Data):

Whoever, lawfully or unlawfully, having possession of, access to, control over, or being entrusted with any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating Restricted Data, communicates, transmits, or discloses the same to any individual or persons, or attempts or conspires to do any of the foregoing, with intent to injure the United States or with intent to secure an advantage to any foreign nation, upon conviction thereof, shall be punished (by imprisonment for life or by imprisonment for any term of years or a fine of not more than \$20,000 or both); or communicates, transmits, or discloses the same to any individual or person, or attempts or conspires to do any of the foregoing, with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation, shall, upon conviction, be punished by a fine of not more than \$10,000 or imprisonment for not more than ten years, or both.

(8) Section 2275 (Receipt of Restricted Data):

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, acquires or

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 5

attempts or conspires to acquire any document, writing, sketch, photograph, plan, model, instrument, appliance, note, or information involving or incorporating restricted data shall, upon conviction thereof, be punished by imprisonment for life or any term of years or a fine of not more than \$20,000 or both.

(9) Section 2276 (Tampering With Restricted Data):

Whoever, with intent to injure the United States or with intent to secure an advantage to any foreign nation, removes, conceals, tampers with, alters, mutilates, or destroys any document, writing, sketch, photograph, plan, model, instrument, appliance, or note involving or incorporating restricted data and used by any individual or person in connection with the production of special nuclear material, or research or development relating to atomic energy, conducted by the United States, or financed in whole or in part by Federal funds, or conducted with the aid of special nuclear material, shall be punished by imprisonment for life, or by imprisonment for any terms of years or a fine of not more than \$20,000 or both.

(10) Section 2277 (Disclosure of Restricted Data):

Whoever, being or having been an employee of the DOE, NRC, a member of the armed forces, an employee of any agency of the United States, or being or having been an employee of a contractor of DOE, NRC, or of an agency of the United States, or being or having been a licensee of DOE or NRC, knowingly communicates, or whoever conspires to communicate or to receive, any restricted data, knowing or having reason to believe that such data is restricted data pursuant to the provisions of the act or under rule or regulation of DOE or NRC issued pursuant thereto, knowing or having reason to believe such person is not so authorized to receive restricted data shall, upon conviction thereof, be punishable by a fine of not more than \$2,500.

(11) Section 2278a (Trespass Upon DOE or NRC Installations):

Whoever willfully violates DOE or NRC regulations relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration or in the custody of DOE or NRC shall be punished by a fine of not more than \$1,000.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 6

Whoever willfully violates DOE or NRC regulations relating to the above subsection with respect to any installation or other property which is enclosed by fence, wall, floor, roof, or other structural barrier shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed \$5,000 or to imprisonment for not more than one year, or both.

(12) Section 2278b (Photographing, etc., of DOE or NRC Installations):

Whoever shall:

(a) make any photograph, sketch, picture, drawing, map, or graphical representation, while present on property subject to the jurisdiction, administration, or in the custody of the DOE or NRC, of any installation or equipment designated by the President as requiring protection against the general dissemination of information relative thereto, in the interest of the common defense and security, without first obtaining the permission of the DOE or NRC, and promptly submitting the product obtained to the DOE or NRC for inspection or such other action as may be deemed necessary; or

(b) uses or permits the use of an aircraft or any contrivance used, or designed for navigation or flight in air, for the purpose of making a photograph, sketch, picture, drawing, map, or graphical representation of any installation or equipment designated by the President as provided in paragraph (1) above (not in this manual), unless authorized by the DOE or NRC, is punishable by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

(13) Section 2283 (Protection of Nuclear Inspectors):

(a) Whoever kills any person who performs any inspections which:

1. are related to the activity or facility licensed by the DOE or NRC and

2. are carried out to satisfy requirements under this chapter or under any other Federal law governing the safety of utilization facilities required to be licensed under Section 2133 or 2134(b) of this title, or the safety of radioactive materials, shall be punished as provided under Sections 1111 and 1112 of Title 18. The preceding sentence shall be applicable only if such person is

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 7

killed while engaged in the performance of such inspection duties or on account of the performance of such duties.

(b) Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person who performs inspections as described under subsection (a) of this section, while such person is engaged in such inspection duties, or on account of the performance of such duties, shall be punished as provided under Section 111 of Title 18. (See MIOG, Part I, 89-2.18.)

(14) Section 2284 (Sabotage or Interruption of Nuclear Facilities or Fuel):

(a) Any person who intentionally and willfully destroys or causes physical damage to, or who intentionally and willfully attempts to destroy or cause physical damage to:

1. any production facility or utilization facility licensed under this chapter,

2. any nuclear waste storage facility licensed under this chapter,

3. any nuclear fuel for such a utilization facility, or any spent nuclear fuel from such a facility, shall be fined not more than \$10,000 or imprisoned for not more than ten years, or both.

4. any uranium enrichment facility licensed by the NRC.

(b) Any person who intentionally and willfully causes or attempts to cause an interruption of normal operation of any such facility through the unauthorized use of or tampering with the machinery, components, or controls of any such facility, shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 8

117-4.1 Additional AEA Penalties

(1) Section 2272 (Violation of Specific Sections):

Whoever willfully violates, attempts to violate, or conspires to violate, any provision of Sections 2077, 2122, or 2131 of this Title, or whoever unlawfully interferes, attempts to interfere, or conspires to interfere with any recapture or entry under Section 2138 of this Title shall upon conviction thereof, be punished by a fine of not more than \$10,000 or by imprisonment for not more than ten years, or both, except that whoever commits such an offense with the intent to injure the United States or with intent to secure an advantage to any foreign nation shall, upon conviction thereof, be punished by imprisonment for life, or by imprisonment for any term of years or a fine of not more than \$20,000, or both.

(2) Section 2273 (Conspiracy):

Whoever willfully violates, attempts to violate, or conspires to violate, any provision of this chapter for which no criminal penalty is specifically provided or of any regulation or order prescribed or issued under Section 2095 or 2201 (b), (i), or (o) of this Title shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both, except that whoever commits such an offense with intent to injure the United States or with intent to secure an advantage to any foreign nation, shall upon conviction thereof, be punished by a fine of not more than \$20,000 or by imprisonment for not more than 20 years, or both.

(3) Section 2278 (Statute of Limitations):

Except for a capital offense, no individual or person shall be prosecuted, tried, or punished for any offense prescribed or defined in Section 2274 to 2276 of this Title unless the indictment is found or the information is instituted within ten years next after such offense shall have been committed.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 9

117-4.2 Violations - Title 18, USC, Section 831 (Prohibited Transactions Involving Nuclear Materials)

(1) Whoever, if one of the circumstances described in paragraph (3) of this section occurs -

(a) without lawful authority, intentionally receives, possesses, uses, transfers, alters, disposes of, or disperses any nuclear material and

1. thereby knowingly causes the death of or serious bodily injury to any person or substantial damage to property;
or

2. knows that circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property;

(b) with intent to deprive another of nuclear material, knowingly,

1. takes and carries away nuclear material of another without authority;

2. makes an unauthorized use, disposition, or transfer of nuclear material belonging to another;

3. uses fraud and thereby obtains nuclear material belonging to another;

(c) knowingly -

1. uses force; or

2. threatens or places another in fear that any person other than the actor will imminently be subject to bodily injury; and thereby takes nuclear material belonging to another from the person or presence of any other;

(d) intentionally intimidates any person and thereby obtains nuclear material belonging to another;

(e) with intent to compel any person, international organization, or governmental entity to do or refrain from doing any act, knowingly threatens to engage in conduct described in paragraph (b)1. or (c) of this section;

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 10

(f) knowingly threatens to use nuclear material to cause death or serious bodily injury to any person or substantial damage to property under circumstances in which the threat may reasonably be understood as an expression of serious purposes;

(g) attempts to commit an offense under paragraph (a), (b), (c), or (d) of this section; or

(h) is a party to a conspiracy of two or more persons to commit an offense under paragraph (a), (b), (c), or (d) of this section, if any of the parties intentionally engages in any conduct in furtherance of such offense; shall be punished as provided in paragraph (2) of this section.

(2) The punishment for offense under -

(a) paragraphs (a) through (g) of paragraph (1) of this section is -

1. a fine of not more than \$250,000; and,
2. imprisonment -

a. for any term of years or for life; (I) if, while committing the offense, the offender knowingly causes the death of any person; or (II) if, while committing the offense under paragraph (a) or (c) of paragraph (1) of this section, the offender, under circumstances manifesting extreme indifference to the life of an individual, knowingly engages in any conduct and thereby recklessly causes the death of or serious bodily injury to any person; and

b. for not more than 20 years in any other case; and

(b) paragraph (h) of paragraph (1) of this section is -

1. a fine of not more than \$250,000; and
2. imprisonment -

a. for not more than 20 years if the offense which is the object of the conspiracy is punishable under paragraph (a)2.a. of this section; and

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 11

b. for not more than 10 years in any other case.

(3) The circumstances referred to in paragraph (1) of this section are that -

(a) the offense is committed in the United States or the special maritime and territorial jurisdiction of the United States, or the special aircraft jurisdiction of the United States, as defined in section 46501 of title 49; |

(b) the defendant is a national of the United States, as defined in Section 101 of the Immigration and Nationality Act (Title 8, USC, Section 1101);

(c) at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and after the conduct required for the offense occurs, the defendant is found in the United States, even if the conduct required for the offense occurs outside the United States; or

(d) the conduct required for the offense occurs with respect to the carriage of a consignment of nuclear material for peaceful purposes by any means of transportation intended to go beyond the territory of the state where the shipment originates beginning with the departure from a facility of the shipper in that state and ending with the arrival at a facility of the receiver within the state of ultimate destination and either of such states is in the United States.

(4) The Attorney General may request assistance from the Secretary of Defense under Chapter 18 of Title 10 in the enforcement of this section and the Secretary of Defense may provide such assistance in accordance with Chapter 18 of Title 10, except that the Secretary of Defense may provide such assistance through any Department of Defense (DOD) personnel.

(5) The Attorney General may also request assistance from the Secretary of Defense under this subsection in the enforcement of this section. Notwithstanding Section 1385 of this Title, the Secretary of Defense may, in accordance with other applicable law, provide such assistance to the Attorney General if -

(a) an emergency situation exists (as jointly determined by the Attorney General and the Secretary of Defense in their discretion) and

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 12

(b) the provisions of such assistance will not adversely affect the military preparedness of the United States (as determined by the Secretary of Defense in such Secretary's discretion).

(6) As used in this section, the term "emergency situation" means a circumstance -

(a) that poses a serious threat to the interests of the United States; and in which -

1. enforcement of the law would be seriously impaired if the assistance were not provided and

2. civilian law enforcement personnel are not capable of enforcing the law.

(7) Assistance under this section may include -

(a) use of personnel of the DOD to arrest persons and conduct searches and seizures with respect to violations of this section and

(b) such other activity as is incidental to the enforcement of this section or to the protection of persons or property from conduct that violates this section.

(8) The Secretary of Defense may require reimbursement as a condition of assistance under this section.

(9) The Attorney General may delegate the Attorney General's function under this subsection only to a Deputy, Associate, or Assistant Attorney General.

(10) As used in this section -

(a) the term "nuclear material" means material containing any -

1. plutonium with an isotopic concentration not in excess of 80-percent plutonium 238;

2. uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 13

3. uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

4. uranium 233;

(b) the term "international organization" means a public international organization designated as such pursuant to Section 1 of the International Organizations Immunities Act (Title 22, USC, Section 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs;

(c) the term "serious bodily injury" means bodily injury which involves -

1. a substantial risk of death;
2. extreme physical pain;
3. protracted and obvious disfigurement; or
4. protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(d) the term "bodily injury" means -

1. a cut, abrasion, bruise, burn, or disfigurement;
2. physical pain;
3. illness;
4. impairment of a function of a bodily member, organ, or mental faculty; or
5. any other injury to the body, no matter how temporary.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 14

EFFECTIVE: 12/23/96

117-5 | PROSECUTIVE POLICY

(1) No action shall be brought against any individual or person for any violation under the AEA unless and until the Attorney General of the United States has advised the DOE or the NRC with respect to such action and no such action shall be commenced except by the Attorney General of the United States: Provided, however, that no action shall be brought under Section 2272, 2273, 2274, 2275, or 2276 of this Title except by the express direction of the Attorney General: and provided further, that nothing in this section shall be construed as applying to administrative action taken by the DOE or NRC. (Section 2271c)

(2) Do not discuss AEA cases with the United States Attorney (USA) until advised to do so by FBIHQ. When investigation reaches a point where prosecutive opinion is desirable, FBIHQ will present the case directly to the DOJ. When a case arises in which facts indicate possible violation of the AEA, as well as violations of other criminal statutes (e.g., Fraud Against the Government or Theft of Government Property), refer case to FBIHQ indicating you wish to present facts to the USA. The Department has no objection to a field division working an investigative matter which also involves other Federal violations in conjunction with the AEA allegations as long as the case is coordinated with FBIHQ and DOJ as required by the AEA of 1954. |

EFFECTIVE: 05/25/93

117-6 | INVESTIGATIVE PROCEDURES

(1) General Procedures

(a) Conduct preliminary investigation to determine what, if any, violation of the AEA of 1954, or Title 18, Section 831, has occurred. This includes conducting appropriate interviews, as necessary.

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 15

(b) Telephonically contact the Domestic Terrorism Unit (DTU), Violent Crime and Major Offenders Section (VCMOS), Criminal Investigative Division (CID), FBIHQ, to resolve any investigative, legal, or operational questions pertaining to this section.

(c) All requests for technical assistance, either from the DOE, NRC, or internal FBI components, should be coordinated directly with the DTU, VCMOS, CID.

(d) Do not contact DOE or NRC Headquarters components directly without the express authorization of FBIHQ. The VCMOS has established effective procedures to facilitate all requests for such assistance.

(e) The requisite intent necessary to prove violations for sections other than Section 2277 (Disclosure of Restricted Data) is a matter to be evaluated by the jury, but evidence of subject's affiliation with subversive groups, association with officials of foreign nations, or evidence of clandestine conspiratorial incidents should be fully developed as indicative of such intent.

EFFECTIVE: 05/25/93

117-6.1 | Violation of Section 2077 (Unauthorized Dealings in Special Nuclear Material) (See 117-6.2(4).)

(1) Initiate preliminary investigation to determine if material in question is special nuclear material, or some other type of controlled nuclear material;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

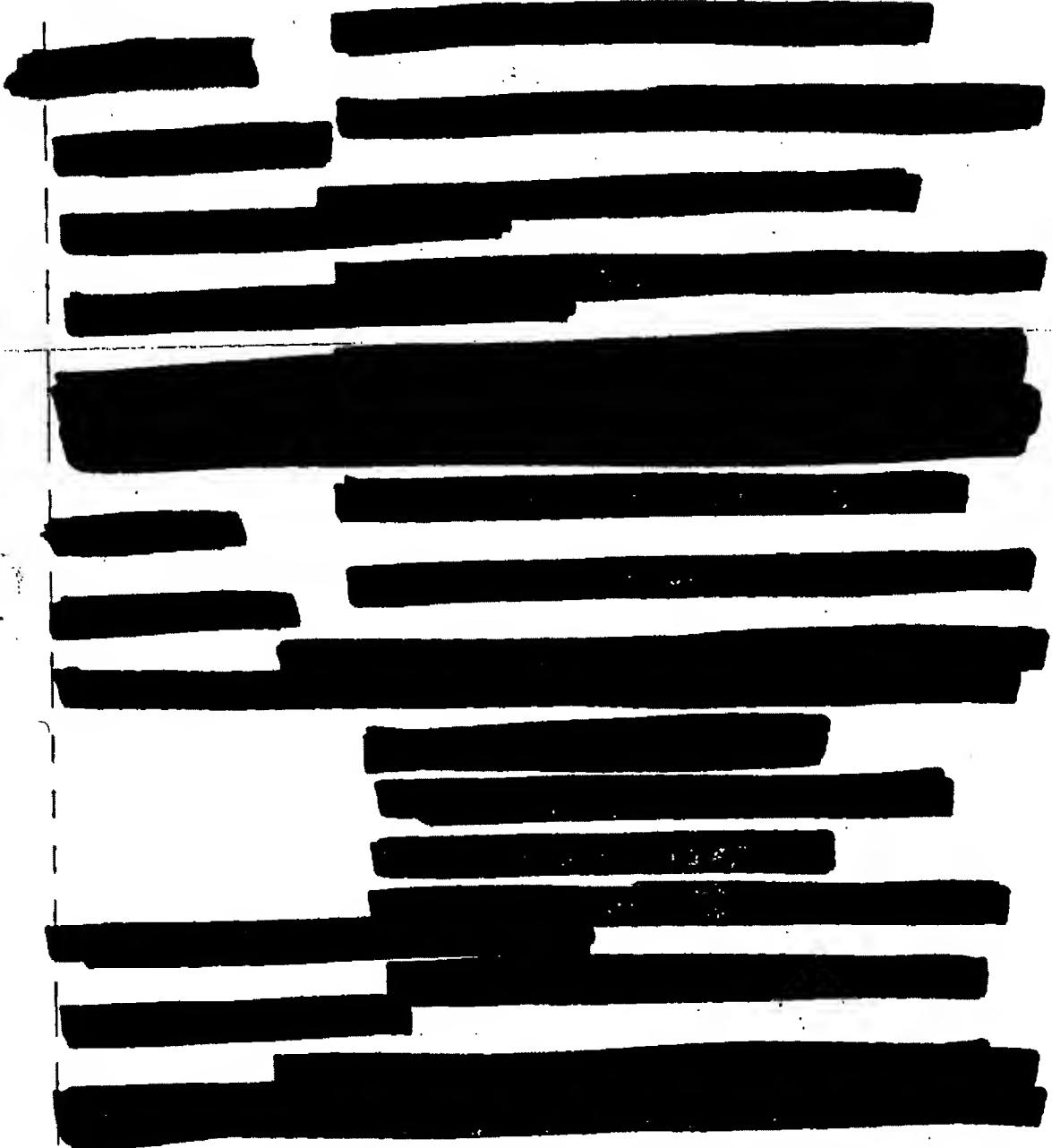
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 16

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(2) Provide the above information by teletype, or in an emergency, by telephone, to the DTU, VCMOS, CID, FBIHQ for an assessment of the credibility of the case.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 17

(3) Should the subject(s) offer to provide a sample of the material for testing or if material is recovered as evidence, immediately notify FBIHQ. The DTU, VCMOS, CID, will contact the appropriate agency and arrange for experienced and qualified individuals to take custody of the material.

(4) FBIHQ will disseminate information regarding foreign transactions to the appropriate agencies.

EFFECTIVE: 05/25/93

117-6.2 | Violations of Section 2092 (License Requirements for Transfers), Section 2111 (Domestic Distribution, License), and Section 2131 (License Required)

(1) Ascertain whether a license is required and, if so, determine if subject has been issued such. If information is not available locally, request assistance from FBIHQ to obtain license information.

(2) Initiate appropriate interview(s) to determine if amount of source, by-product, or Special Nuclear Material in possession of subject(s) is within the quantitative or qualitative limits requiring a license.

(3) Obtain cooperation of local DOE or NRC office to obtain analysis of uranium, thorium, plutonium, or other material, as required.

(4) Consider use of investigative questions outlined in Section 117-6.1(1)(a), to assist DOE in assessing the credibility of the case.

EFFECTIVE: 05/25/93

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 18

117-6.3 | Violation of Section 2098 (Public Land - Conflict of Interest)

(1) Determine if individual, corporation, partnership, or association is involved directly or indirectly, in the atomic energy program. If so, ascertain nature and scope of involvement.

(2) Ascertain if confidential official information was acquired as to the existence of deposits of uranium, thorium, or other materials on public domain, pursuant to involvement in the atomic energy program.

(3) Determine if the deposits were located for the benefit of the individual, corporation, partnership, or association, and the extent of benefit.

(4) Signed statements should be obtained from all subjects and potential witnesses. If subject is an employee or agent of the United States, signed statements under oath should be obtained from the subject and potential witnesses, as provided in Title 5, USC, Section 303. If subject declines to furnish a signed statement or refuses to be placed under oath, an unsigned statement should be taken in accordance with existing instructions and such facts should be recorded in your report.

EFFECTIVE: 05/25/93

117-6.4 | Violation of Section 2122 (Prohibitions Governing Atomic Weapons)

(1) Initiate preliminary investigation to determine if the principal purpose of the device is for the use as, or for the development of, a weapon, a weapon prototype, or a weapon test device.

(2) Determine if the device or any part of the device is classified as restricted data.

(3) Immediately provide the results of the preliminary investigation to the DTU, VCMOS, CID, for coordination with the DOE, DOJ, and other appropriate agencies.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 19

EFFECTIVE: 05/25/93

117-6.5 | Violations of Section 2274 (Communication of Restricted Data), Section 2275 (Receipt of Restricted Data), and Section 2276 (Tampering with Restricted Data)

(1) Initiate preliminary investigation to determine what type of information (document, writing, sketch, photograph, model, instrument, etc.) was allegedly communicated, transferred, acquired or tampered with; the classification of the information; and, whether it may be declassified for prosecutive purposes. If necessary, contact the DTU, VCMOS, CID, for assistance in determining the classification of the information.

(2) Initiate investigation immediately where there is an allegation that documents were stolen, concealed, or misappropriated under circumstances indicating a violation of the Atomic Energy Act of 1954, or other statutes within FBI jurisdiction. Where there is an indication of loss through gross negligence, consideration should be given to investigation under provisions of the espionage statutes.

(3) Promptly notify FBIHQ of any investigations involving employees of the DOE or NRC. FBIHQ will coordinate investigative results with the DOJ.

(4) Where classified documents are reported missing, a statement should be obtained from the referring agency as to why the matter is being referred for investigation. Confirm in writing to the referring agency the receipt of the complaint, include a statement as to whether or not an investigation is being conducted and, if not, under what conditions an investigation will be conducted. Advise FBIHQ promptly of facts and action being taken.

EFFECTIVE: 05/25/93

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 20

||117-6.5.1| Administrative Misfiling |(See FCI Manual, Part I,
| 65-8 through 65-8.3.)|

| The DOE and the NRC have the primary responsibility for
| the security of their documents. | Administrative misplacement or
| misfiling of documents, or compromise of documents in transmission,
| are matters to be handled by DOE, NRC, or other Government agency
| involved, and no investigations should be conducted. If missing
| documents are of significant importance, maintain close liaison with
| the interested agency.

EFFECTIVE: 05/25/93

||117-6.5.2| Lax Security |(See MAOP, Part II, Section 9-3.3.3.)|

| All facts regarding lax security and negligence should be
| referred to FBIHQ in letterhead memorandum form suitable for
| dissemination to the interested agency.

EFFECTIVE: 05/25/93

117-6.6 |Violation of Section 2277 (Disclosure of Restricted
Data)

| (1) Obtain a signed statement regarding the exact
| disclosures made, if possible.

| (2) Obtain the classification and security significance
| of the information disclosed, whether the data may be declassified for
| prosecution, and determine the circumstances surrounding the
| disclosure.

| (3) Obtain background data concerning persons involved,
| including evidence that individuals making disclosures were aware of
| security regulations concerning the information disclosed.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 21

(4) An early interview of the subject is generally advisable. If admissions are obtained, corroborate through investigation.

(5) Proof of intent is not necessary under this section, provided it can be shown the person has knowledge restricted data has been disclosed to a person not authorized to receive it, and the person disclosing same meets the requisites of the statute.

EFFECTIVE: 05/25/93

117-6.6.1 Information Required In Communications

Include in final communication a statement regarding administrative action taken by DOE or NRC or, if military personnel are involved, action to be taken by armed forces.

EFFECTIVE: 05/25/93

117-6.6.2 Leaks of Classified Data to the Press

(1) If requests for investigations of cases of this type are received locally, advise the referring agency in writing that the decision as to investigation will be made at FBIHQ. Furnish details to FBIHQ promptly and take no further action pending FBIHQ authority.

(2) If investigation is authorized, the following information must be obtained:

(a) Date and identity of the article; exact statements alleged to be classified; whether data published is accurate; was data classified properly; can data be declassified for purposes of prosecution, and, if so, name of the person competent to testify concerning classification.

(b) Extent of official dissemination of classified data; whether data had been subject to prior official releases; or if

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 22

declassification had been decided upon prior to publication.

(c) Whether the classified information came from a specific document; if so, origin of the document,

(d) Name of the individual in DOE, NRC, DOD, or other Government agency responsible for security of the classified information published,

(e) Whether the material, background data, or portions thereof, have been previously officially released or published in the press, to make educated speculation on the matter possible.

(f) Whether clearance for publication was sought from proper authorities prior to publication.

EFFECTIVE: 05/25/93

117-6.7 | Violations of Section 2284 (Sabotage of Nuclear Facilities or Fuel)

(1) Allegations indicating possible sabotage directed at the atomic energy program must be thoroughly investigated and resolved. Communications carry dual character, "Atomic Energy Act; Sabotage."

(2) In the case of a possible violation of Section 2284, the field division must immediately notify FBIHQ by telephone.

(3) Prosecution must be authorized by DOJ.

(4) Investigations of sabotage at atomic energy facilities must conform to investigative procedures of Part I, Section 98, of this manual and satisfy the elements of Title 42, USC, Section 2284.

(5) Other possible violations of Federal law may also be applicable during investigation of a sabotage incident at a nuclear facility, such as foreign-inspired strikes, slowdowns, and destruction of Government property. Although the FBI is not interested in legitimate labor-management disputes, it must be alert, through

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines

Part I

PAGE 117 - 23

adequate informant coverage, for the possibility of planned incidents affecting national security.

(6) In the case of a labor dispute, include full name of international or local union involved; summary of the incident; effect on security of the facility; facts indicating violation within the Bureau's jurisdiction; and other information of value.

(7) The legislative history states that this section is intended to cover a situation when a person willfully and intentionally interrupts, or attempts to interrupt, a power plant's operation by tampering or improperly using the machinery, components, or controls of any nuclear facility.

(8) The phrase "unauthorized use" is described as use without the permission of the licensee. The word "tampering" is described as altering for improper purposes or in an improper manner. The phrase "interruption of normal operation" is described as a cessation of actual production, utilization, or storage operations which, if accomplished, would result in substantial economic harm or cost to the licensee.

(9) This section applies only to specified actions which could cause substantial damage, economic harm, or costs to the licensee, and to willful acts performed with a criminal intent.

(10) This section applies to nuclear power facilities, and nuclear waste storage facilities, licensed under the AEA of 1954, as amended, and any nuclear fuel for a utilization facility or spent nuclear fuel from a utilization facility. It is the policy of the Federal government to include Federal buildings, not licensed under the AEA, that contain Special Nuclear Material, in that damage to Federal buildings, and/or theft of special nuclear materials still fall within the provisions of the U.S. criminal code.

EFFECTIVE: 05/25/93

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 24

117-7 | INVESTIGATIVE PROCEDURES FOR OTHER RELATED
VIOLATIONS

(1) Threat/Extortion under the AEA: (See MIOG, Part I,
9-9(1).)

(a) All threats and extortions which are investigated as a result of a possible violation of the AEA, or Title 18, USC, Section 831, should be handled in the same manner as prescribed under Part I, Section 9, of this manual. However, DOJ prosecutive opinions will still be necessary, prior to discussion with the USA.

(b) Immediately contact the DTU, VCMOS, CID, as soon as possible and provide an exact copy of the wording of the threat for dissemination to the DOE for a threat assessment.

(c) Upon receipt of the results of the assessment, FBIHQ will notify the appropriate field divisions as to the credibility of the threat.

(d) In the event the extortion or threat is determined to be a hoax, or is not a violation under the AEA of 1954, the field divisions may proceed to investigate this matter as a conventional extortion or threat utilizing guidelines under Part I, Section 9, of this manual, without the requirement of obtaining DOJ opinions.

(e) After coordinating with FBIHQ, the appropriate United States Attorney (USA) may be contacted to proceed with the conventional threat or extortion investigation which is not a violation of the AEA.

(2) Missing Source Material, Special Nuclear Material, or By-Product Material:

(a) Notify FBIHQ and initiate preliminary investigation to determine if materials have been stolen, misappropriated, or diverted. If so, conduct investigation promptly. In cases of uncertainty, submit facts to FBIHQ for evaluation.

(b) Where preliminary investigation indicates loss involving items of little security significance; is the result of inadequate accountability records; or is process loss, submit closing communication.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 25

(c) Where complicated accountability records are involved, Special Agents with specific training in the accountability of radioactive materials should be utilized wherever possible. If warranted, a request should be made of FBIHQ for a laboratory technician familiar with this type of investigation.

EFFECTIVE: 05/25/93

117-8 | REPORTING PROCEDURES

(1) Immediately advise the DTU, VCMOS, CID, in the following instances of major violations by teletype, or telephone, as facts warrant:

(a) Violations involving foreign-directed espionage or sabotage.

(b) Serious damage to plants or facilities.

(c) Loss of critical Restricted Data or Special Nuclear Material under circumstances indicating a violation of the AEA.

(d) Cases which may receive wide publicity.

(e) Other major and important violations.

(2) Submit a summary communication within two weeks of initiating a preliminary investigation under the AEA, or Title 18, USC, Section 831, to FBIHQ, Attention: DTU, VCMOS, CID.

(3) Submit a Letterhead Memorandum (LHM) (original and four copies) to the DTU, VCMOS, CID, within 30 days of the initiation of an Atomic Energy Act, or Title 18, USC, Section 831 investigation. The LHM should be suitable for dissemination to the DOJ, DOE, and the NRC. The LHM should, at a minimum, detail the predication for initiating the investigation, the names of the other agencies notified, a summary of the investigation, and, if possible, a prosecutive opinion.

(4) A closing LHM (original and four copies) must be

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 26

prepared at the conclusion of each investigation, and submitted to FBIHQ, Attention: DTU, VCMOS, CID. The closing LHM must restate the predication for initiating the investigation, summarize investigation findings, and detail the disposition of the investigation, including prosecutive opinions or administrative action initiated by the DOE or NRC. Ensure that a complete description of all significant events are dated in the closing LHM.

(5) Prosecutive reports should be submitted to FBIHQ, when applicable.

EFFECTIVE: 05/25/93

117-8.1 Dissemination of Reports

(1) Do not disseminate FBI communications to the USA, DOE, or NRC locally without FBIHQ approval. Bureau communications will be disseminated by FBIHQ, through DOE and NRC Headquarters when possible. In the event of an emergency situation necessitating immediate local dissemination, FBIHQ should be advised.

(2) Close liaison should be maintained regarding investigations of individuals of interest to the local DOE and NRC offices.

EFFECTIVE: 05/25/93

117-9 | CONTINGENCY PLANS

(1) Every field office shall develop and maintain a contingency plan for responding to potential nuclear terrorism incidents that may occur within their division. The plan should include a complete security survey of every major DOE and NRC nuclear facility located within their territory. The plans must be updated on an annual basis and changes submitted to the Counterterrorism Planning Unit (CPU), Counterterrorism Section (CTS), Intelligence Division (INTD), by June 1st of each year.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 27

(2) For the purpose of this section, a major nuclear facility is any NRC-licensed nuclear power plant, or nuclear fuel facility, or a DOE research and weapons laboratory or production facility.

(3) Each field office with one or more major nuclear facilities within its territory shall maintain a list of selected Special Agents for use on investigations requiring immediate access to highly classified information, material, or exclusion areas. The names of these Special Agents must be furnished by each field office to the security officer of the atomic energy installation in order that he/she may effect arrangements for those Agents to be granted immediate appropriate access in connection with official investigations. Each SAC shall select and designate Special Agents for such squads and promptly notify the atomic energy installation security officer of any changes made to the squad.

EFFECTIVE: 05/25/93

117-10 COORDINATION OF FBI TRAINING EXERCISES CONDUCTED AT
NRC-LICENSED NUCLEAR POWER PLANTS

(1) FBI participation in all field training exercises conducted at NRC-licensed nuclear power plants must be coordinated directly with FBIHQ in advance of the exercise so that the necessary coordination between FBIHQ and NRC Headquarters may be accomplished.

(a) Prior notification must be made to the CPU, CTS, INTD by appropriate communication, providing the following essential information:

1. The name of the NRC-licensed nuclear power plant.
2. The dates of the planned exercise.
3. The nature of the training.
4. The projected number of FBI personnel involved.
5. A notation of special assets, such as

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines

Part I

PAGE 117 - 28

helicopters and technical equipment, which will be used in the exercise.

6. The names of other agencies involved in the exercise.

7. The projected number of other agency personnel involved.

8. The name of the FBI point of contact on scene.

9. The name of the local utility point of contact.

10. Whether or not regional NRC officials have been advised of the planned exercise, and, if so, the names of those officials.

(2) Upon receipt of the information, the CPU, CTS, INTD will coordinate directly with NRC Headquarters and will obtain the necessary authorization for the exercise from the NRC.

EFFECTIVE: 05/25/93

117-11 REWARDS FOR INFORMATION RECEIVED REGARDING ATOMIC WEAPONS

Title 50, USC, Section 47a-f, provides:

(1) Any person who furnishes original information to the United States-

(a) leading to the finding or other acquisition by the United States of special nuclear material or an atomic weapon which has been introduced into the United States or manufactured or acquired therein contrary to the laws of the United States, or

(b) with respect to the introduction or attempted introduction into the United States or the manufacture or acquisition or attempted manufacture or acquisition of, or a conspiracy to introduce into the United States or to manufacture or acquire, special

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 29

nuclear material or an atomic weapon contrary to the laws of the United States, or

(c) with respect to the export or attempted export, or a conspiracy to export, special nuclear material or an atomic weapon from the United States contrary to the laws of the United States, shall be rewarded by the payment of an amount not to exceed \$500,000.

(2) The Attorney General shall determine whether a person furnishing information to the United States is entitled to a reward and the amount to be paid. Rewards will be authorized by the Awards Board, consisting of the Secretary of the Treasury (Chairman), Secretary of Defense, Attorney General, Director of Central Intelligence, and the Administrator of DOE or one NRC Commissioner. A reward of \$50,000 or more may not be made without the approval of the President.

(3) If the information leading to an award under Section 47b of this Title is furnished by an alien, the Secretary of State, the Attorney General, and the Director of Central Intelligence, acting jointly, may determine that the entry of such alien into the United States is in the public interest and, in that event, such alien and the members of his/her immediate family may receive immigrant visas and may be admitted to the United States for permanent residence.

(4) Any awards granted under Section 47b of this Title shall be certified by the Attorney General and, together with approval of the President in those cases where such approval is required, transmitted to the Director of Central Intelligence for payment out of funds appropriated under National Security Act of 1947, as amended.

(5) Information regarding smuggling of atomic weapons or their components or the illegal manufacture or acquisition of same should be reported promptly and in detail to FBIHQ.

EFFECTIVE: 05/25/93

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 30

117-12 HANDLING OF RADIOACTIVE MATERIALS (See MIOG, Part I,
249-1.)

(1) Millions of packages of radioactive materials are transported in the United States annually. Most shipments consist of medical and industrial products. Other shipments include nuclear power plant fuel, nuclear weapons and weapons material, and radioactive waste generated by hospitals, laboratories, nuclear reactors, and military facilities.

(2) Radioactive materials are packaged, marked, labeled, and placarded with public safety as the foremost goal. The degree of packaging used is commensurate with the hazardousness of the contents. Extremely hazardous radioactive materials are shipped in packaging which does not break under accident conditions. Low-level radioactive materials are shipped in less resistant packages which may break, and the radioactive material could be dispersed. However, if dispersed, these materials would present only a minimal health risk.

EFFECTIVE: 05/25/93

117-12.1 Radiation Protection

The following factors should be considered when evaluating available protection:

(1) If all containers of radioactive material are sealed or closed and are intact, it is unlikely that radioactive hazards are associated with the incident. Efforts should be made to protect the integrity of the containers during handling or transportation.

(2) There are three important factors in protecting individuals from radiation: Time, Distance, and Shielding.

(a) Time. The less time an individual remains in a radiation field, the less exposure that individual will receive.

(b) Distance. The further an individual remains from a radiation source, the less exposure that individual will receive. The intensity of a radiation field decreases as the distance from the source increases.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 31

(c) Shielding. The more material placed between an individual and a radiation source, the less exposure that individual will receive. The intensity of radiation is reduced by the absorption and scattering processes associated with such material. For gamma radiation, dense material such as lead is most effective as a shield. Beta radiation can be shielded by relatively thin amounts of wood or plastic. Alpha is shielded by virtually any material.

EFFECTIVE: 05/25/93

117-12.2 Emergency Procedures

(1) Radioactive materials released at the scene of an incident, even at levels of little consequence, can result in very small levels of contamination being spread a great distance. The spread of contamination can be controlled by limiting access to and egress from the incident scene. Although, in some cases, the contamination spread would be of insignificant radiological consequence, any detectable amount can prove to be of great concern to the public and news media. RADIOACTIVE MATERIAL SHOULD BE HANDLED BY QUALIFIED PERSONS FROM THE DOE, NRC OR COMPARABLE STATE AGENCY. DO NOT HANDLE ANY MATERIAL SUSPECTED OF BEING RADIOACTIVE UNTIL IT HAS BEEN EXAMINED BY QUALIFIED PERSONNEL.

(2) It is important to treat everything that has been near the incident as potentially radioactive and contaminated until it has been verified by qualified radiation protection personnel to be free of radioactive contamination. Individuals who have contacted potentially contaminated materials should remain on hand until they have been checked by qualified personnel. Only qualified personnel should attempt to clean up a spill of any hazardous materials-- radioactive or not.

(3) Emergency advisory support, or other assistance, may be obtained from the DOE or NRC via FBIHQ.

EFFECTIVE: 05/25/93

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 117 - 32

||117-13| CHARACTER - ATOMIC ENERGY ACT

EFFECTIVE: 05/25/93

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 119 - 1

SECTION 119. FEDERAL REGULATION OF LOBBYING ACT

119-1 STATUTES

EFFECTIVE: 01/31/78

119-1.1 Title 2, USC, Section 261-270

(1) The Act provides for the registration of lobbyists active in matters pending before Congress and the filing by them of quarterly reports of receipts and expenditures.

(2) Elements

That the accused:

(a) Prior to registering with the Secretary of the Senate and the Clerk of the House of Representatives for pay or for other consideration attempted to influence passage or defeat of any legislation pending before the Congress of the U. S.; or

(b) After registration failed to file under oath between the first and tenth of each calendar quarter a detailed report of all receipts and expenditures during the preceding calendar quarter in carrying on his work; or

(c) After having been convicted on the above violations, shall within a period of three years from the date of such conviction attempt to influence directly or indirectly legislation before the Congress of the U.S.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 119 - 2

119-1.2 Section 261 (Definitions)

(1) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise or agreement, whether or not legally enforceable, to make a contribution.

(2) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable, to make an expenditure.

(3) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(4) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(5) The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House.

EFFECTIVE: 01/31/78

119-1.3 Section 262 (Detailed Accounts of Contributions; Retention of Received Bills of Expenditures)

(1) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of --

(a) All contributions of any amount or of any value whatsoever:

(b) The name and address of every person making any such contribution of \$500 or more and the date thereof;

(c) All expenditures made by or on behalf of such organization or fund; and

(d) The name and address of every person to whom any

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 119 - 3

such expenditure is made and the date thereof.

(2) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding \$10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

EFFECTIVE: 01/31/78

119-1.4 Section 263 (Receipts for Contributions)

Every individual who receives a contribution of \$500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof render to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received.

EFFECTIVE: 01/31/78

119-1.5 Section 264 (Statements of Accounts Filed with Clerk of House)

(1) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (1) or (2) of Section 266 of this title shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the date next preceding the date of filing--

(a) The name and address of each person who has made a contribution of \$500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of \$500 or more to such person since August 2, 1946;

(b) The total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (a) of this subsection;

(c) The total sum of all contributions made to or

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 119 - 4

for such person during the calendar year;

(d) The name and address of each person to whom an expenditure in one or more items of the aggregate amount of value, within the calendar year, of \$10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(e) The total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (d) of this subsection;

(f) The total sum of expenditures made by or on behalf of such person during the calendar year.

(2) The statements required to be filed by subsection (1) of this section shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

EFFECTIVE: 01/31/78

119-1.6 Section 265 (Preservation of Statements)

A statement required by this chapter to be filed with the Clerk--

(1) Shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its non-receipt;

(2) Shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

EFFECTIVE: 01/31/78

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 119 - 5

119-1.7 Section 266 (Persons to Whom Applicable)

The provisions of this statute shall apply to any person (except a political committee as defined in chapter 8 of this title, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(1) The passage or defeat of any legislation by the Congress of the United States.

(2) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

EFFECTIVE: 01/31/78

119-1.8 Section 267 (Registration of Lobbyists with Secretary of the Senate and Clerk of House; Compilation of Information)

(1) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines

Part I

PAGE 119 - 6

official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(2) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

EFFECTIVE: 01/31/78

119-1.9 Section 268 (Reports and Statements Under Oath)

All reports and statements required shall be made under oath, before an officer authorized by law to administer oaths.

EFFECTIVE: 01/31/78

119-1.10 Section 269 (Penalties and Prohibitions)

(1) Any person who violates any of these provisions shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than \$5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.

(2) In addition to the penalties provided for in subsection (1) of this section, any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 119 - 7

thereof, be guilty of a felony, and shall be punished by a fine of not more than \$10,000, or imprisonment, for not more than five years, or by both such fine and imprisonment.

EFFECTIVE: 01/31/78

119-1.11 Section 270 (Exemptions)

These provisions shall not apply to practices or activities regulated by chapter 8 of this title nor be construed as repealing any portion of said chapter 8 of this title.

EFFECTIVE: 01/31/78

119-2 POLICY

(1) The Attorney General has advised that copies of reports in Federal Regulation of Lobbying Act cases be furnished in all instances only to the Criminal Division.

(2) Upon receipt of a complaint, full details should be obtained from the complainant and incorporated into a closing prosecutive report which should be transmitted immediately to FBIHQ. If deemed necessary FBIHQ should be advised of the details of the complaint by more expeditious means.

(3) USA should not be consulted and no investigation should be initiated pending receipt of instructions from FBIHQ.

EFFECTIVE: 01/31/78

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 119 - 8

119-3 INVESTIGATIVE PROCEDURES

Investigative effort should be directed to ascertain:

(1) Whether or not the "person" involved solicited, collected, or received contributions of money or things of value;

(2) If so, whether one of the main purposes of the "person" so soliciting, collecting, or receiving the contribution or whether one of the main purposes of the contribution itself, was to influence the passage or defeat of legislation by Congress, and

(3) If the first two conditions prevail, whether the intended method of accomplishing the purpose was by means of direct communication with members of Congress. Such direct pressures may be accomplished either by the lobbyist or through hirelings or by means of an artificially stimulated letter campaign.

EFFECTIVE: 01/31/78

119-4 CHARACTER - FEDERAL REGULATION OF LOBBYING ACT

EFFECTIVE: 01/31/78

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 120 - 1

SECTION 120. FEDERAL TORT CLAIMS ACT

120-1 STATUTE

Title 28, USC, Sections 2671 to 2680, permits the U.S. to be sued in tort.

EFFECTIVE: 01/31/78

120-1.1 Section 2674, Liability of United States

"The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

"If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof."

EFFECTIVE: 01/31/78

120-1.2 Section 2672

Provides for the administrative adjustment of claims under this act of (\$25,000) or less by the head of each Federal agency.

EFFECTIVE: 01/31/78

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 120 - 2

120-1.3 Venue

(1) Title 28, USC, Sections 1346(b) and 1402(b)

(a) Section 1346(b) provides that the U. S. district courts, together with the U.S. District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims arising under this act.

(b) Section 1402(b) provides any civil action on claims under the act may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred.

EFFECTIVE: 01/31/78

120-2 INVESTIGATIVE JURISDICTION

(1) Bureau at specific request of Department or USA accepts for investigation cases involving claims or potential claims in excess of \$1,000 except:

(a) Suits brought against Government employees in state or local courts unless they arise out of the operation of a motor vehicle and the provisions of Title 28, USC, Section 2679(b), et seq., are applicable. (Government will assume defense of employee if acting within scope of his employment).

(b) Special investigations for congressional committees which are considering legislation for the relief of the plaintiff.

(2) Investigations should be instituted upon specific request of USA without FBIHQ authorization.

(3) Bureau also has agreed to conduct investigations for agencies and bureaus of Department of Justice in cases of serious personal injury or death. These investigations may be instituted without FBIHQ authorization at the request of agency or bureau of Department. If they desire to conduct their investigations of accidents, Bureau has no objection, although Bureau will receive and conduct investigations which are referred under FTCA. Promptly advise FBIHQ of institution of such investigations.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 120 - 3

EFFECTIVE: 01/31/78

120-2.1 Investigative Suggestions

(1) Examine files of USA and interested governmental agency for background material and investigative leads.

(2) Obtain from USA at the time he specifically requests an investigation:

(a) Facts surrounding accident

(b) Type of vehicle involved, auto, truck, airplane, etc.

(c) Name of governmental agency involved

(d) Amount of civil suit filed by plaintiff

(e) Name of law firm representing plaintiff

(f) Specific scope of inquiry desired to enable USA to prepare his defense of civil suit against Government.

(g) Definitely determine if USA desires any contact with plaintiff. If so, necessary arrangements should be made by USA with plaintiff's attorney.

(3) When practicable, obtain signed statements from all parties involved and from all potential witnesses. During such interviews ascertain, in addition to regular address, where or through whom individual may be reached on short notice.

(4) Obtain description of scene with accompanying photographs and charts when such material will be of evidentiary or informative value.

(5) Obtain complete information on property damages or personal injuries sustained by all parties, including estimates on amount of property damage and medical reports on personal injuries. Where hospital records are examined, in addition to results of interviews conducted, obtain and report name and address of hospital official who has custody of and can introduce records in court.

(6) Obtain copy of report submitted by local police where they conducted investigation.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 120 - 4

(7) With respect to automobile accidents, additional suggestions and instructions are set forth in the Manual of Administrative Operations and Procedures.

(8) Be alert for contributory negligence on part of plaintiff which would provide grounds for countersuit. In this connection, if USA desires investigation relative to plaintiff's financial ability, conduct investigation specifically requested.

(9) If request for foreign investigation received from USA, advise him Bureau has no facilities with which to conduct such investigations in FTCA cases. Suggest he make such request through Department.

EFFECTIVE: 01/31/78

120-3 STATUTE OF LIMITATIONS

See Title 28, USC, Section 2401(b). A tort claim is barred unless action is begun within two years after such claim accrues.

EFFECTIVE: 01/31/78

120-4 EXCEPTIONS TO FEDERAL TORT CLAIMS ACT

(1) Title 28, USC, Section 2680, lists a number of exceptions wherein the provisions of FTCA do not apply. Those most directly related to Bureau's work are as follows:

(a) Any claim based upon an action or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of an action or omission of an employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 120 - 5

(c) Any claim arising out of libel, slander, misrepresentation, deceit or interference with contract rights.

EFFECTIVE: 01/31/78

120-5 POLICY

(1) Open case file on each individual plaintiff or group of plaintiffs who file a single civil suit against Government in connection with a particular accident.

(2) Major disasters

(a) Conduct immediate preliminary investigation to determine if Government has or may have an interest.

(b) If so, USA should be immediately apprised of information developed and advised that, in order to preserve evidence and obtain necessary facts, an investigation will be conducted by Bureau in event he so desires.

(c) Advise FBIHQ by telephone or teletype of facts ascertained, whether Government is or may be involved, and whether USA desires an FTCA investigation.

(3) Status

Tort cases should be kept in a pending status until final action has been concluded in U.S. district court. (Case should not be held open to follow results of appeals.) Thereafter closing report should be submitted. |Accomplishment Report| should also be submitted showing:

- (a) Amount of suit
- (b) Settlement or award

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 120 - 6

120-7 PRIVACY ACT - REQUIREMENTS

| (1) | When interviewing anyone in the above classification, in order to solicit information about|himself/herself|or|his/her|own activities, the interviewing Agent must follow the procedures described in MIOG, Part I, 190-5, subparagraphs (2) and (3).

| (2) | When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG, Part I, 190-7.

EFFECTIVE: 02/12/92

120-8 CHARACTER - FEDERAL TORT CLAIMS ACT

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 1

SECTION 122. LABOR MANAGEMENT RELATIONS ACT, 1947

122-1 STATUTE

Title 29, USC, Sections 161(2), (6), 162, 176-178, and
186(a), (b), and (c). |

EFFECTIVE: 11/12/80

122-1.1 Section 161(2)

(1) Contempt of court - failure to answer subpoena

"(2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof."

EFFECTIVE: 11/12/80

122-1.1.1 Procedure

Bureau will assist in locating any individual to testify in proceedings within U.S. District Court after bench warrant has been issued by district court and returned non est by U.S. Marshal.

EFFECTIVE: 11/12/80

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Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 2

| 122-1.2 Section 161(6)

EFFECTIVE: 11/12/80

| 122-1.2.1 Elements

(1) Requests for information from National Labor
Relations Board (NLRB)

"(6) The several departments and agencies of the
Government, when directed by the President, shall furnish the Board,
upon its request, all records, papers, and information in their
possession relating to any matter before the Board."

EFFECTIVE: 11/12/80

| 122-1.2.2 Procedure

| Information may be furnished to the NLRB provided
adequate consideration has been given to the provisions of the
Privacy Act as it pertains to the type material being requested.
Any questions should be resolved by contact with FBIHQ. |

EFFECTIVE: 11/12/80

| 122-1.3 Section 162

EFFECTIVE: 11/12/80

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 3

| 122-1.3.1 Elements

| (1) |Interference with an NLRB Member or Agent--|

| "Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this subchapter shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both."

| (2) Related Statute - Obstruction of Justice (OOJ)

| Title 18, USC, Section 1505, OOJ, covers obstruction of the proceedings before any Federal departments or agencies, which include the NLRB. (See Part I, Section 72, of this manual.)|

EFFECTIVE: 11/12/80

| 122-1.3.2 Procedure

| Complaints or information concerning interference with an NLRB member or agent should be discussed immediately with USA to ascertain whether or not there is sufficient indication of a violation to justify investigation.|

EFFECTIVE: 11/12/80

| 122-1.4 Section 176

EFFECTIVE: 11/12/80

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 4

| 122-1.4.1 Elements

(1) Conciliation of labor disputes, national emergencies
- contempt of court

"Whenever in the opinion of the President of the United States, a threatened or actual strike or lock-out affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public."

EFFECTIVE: 11/12/80

| 122-1.4.2 Procedure

Attorney General will request Bureau investigations. Should an investigation be authorized under this section, specific instructions will be given field as to nature and extent of investigation desired. Investigations have been requested by Department to establish violations of injunctions under this section as contempt of court.

EFFECTIVE: 11/12/80

| 122-1.5 Section 177

EFFECTIVE: 11/12/80

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 5

| 122-1.5.1 Elements

(1) Conciliation of labor disputes, national emergencies
- contempt of court

"(a) A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute."

EFFECTIVE: 11/12/80

| 122-1.5.2 Procedure

Attorney General will request Bureau investigations. Should an investigation be authorized under this section, specific instructions will be given field as to nature and extent of investigation desired. Investigations have been requested by Department to establish violations of injunctions under this section as contempt of court.

EFFECTIVE: 11/12/80

| 122-1.6 Section 178

EFFECTIVE: 11/12/80

| 122-1.6.1 Elements

(1) Conciliation of labor disputes, national emergencies
- contempt of court

"(a) Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lock-out or the continuing thereof, and if the court finds that such threatened or actual strike or lock-out--

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 6

"(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

"(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lock-out, or the continuing thereof, and to make such other orders as may be appropriate.

"(b) In any case, the provisions" of Sections 101-115 "of this title, shall not be applicable.

"(c) The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in section 1254 of Title 28."

EFFECTIVE: 11/12/80

| 122-1.6.2 Procedure

Attorney General will request Bureau investigations. Should an investigation be authorized under this section, specific instructions will be given field as to nature and extent of investigation desired. Investigations have been requested by Department to establish violations of injunctions under this section as contempt of court.

EFFECTIVE: 11/12/80

| 122-1.7 | Section 186(a), (b), and (c) |

EFFECTIVE: 11/12/80

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 7

122-1.7.1 Elements

(1) Section 186(a) Prohibits Unlawful Payments or Loans
by Employers or Persons Acting in the Interest of Employers

"(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value -

"(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

"(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

"(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

"(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(2) Section 186(b) Prohibits Acceptance or Demands for
Unlawful Payments

"(b) (1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

"(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle" (as defined in Sections 301-327 of Title 49) "employed in the transportation of property in commerce, or the employer of any such operator, any money or other

Sensitive

Manual of Investigative Operations and Guidelines

Part I

PAGE 122 - 8

thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: Provided, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(3) Section 186(c) Enumerates Nine Exceptions to the Prohibited Activities of (a) and (b)

"(c) (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines

Part I

PAGE 122 - 9

neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by an employer to a trust fund, established by such representative for the purpose of pooled vacation, apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; or (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal service shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under subchapter II

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 10

of this chapter or this chapter; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.

| "(d) (1) Any person who participates in a transaction involving a payment, loan, or delivery of money or other thing of value to a labor organization in payment of membership dues or to a joint labor-management trust fund as defined by clause (B) of the proviso to clause (5) of subsection (c) of this section or to a plant, area, or industry-wide labor-management committee that is received and used by such labor organization, trust fund, or committee, which transaction does not satisfy all the applicable requirements of subsections (c) (4) through (c) (9) of this section, and willfully and with intent to benefit himself or to benefit other persons he knows are not permitted to receive a payment, loan, money, or other thing of value under subsections (c) (4) through (c) (9) violates this subsection, shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than \$15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed \$1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than \$10,000 or imprisoned for not more than one year, or both.

"(2) Except for violations involving transactions covered by subsection (d) (1) of this section, any person who willfully violates this section shall, upon conviction thereof, be guilty of a felony and be subject to a fine of not more than \$15,000, or imprisoned for not more than five years, or both; but if the value of the amount of money or thing of value involved in any violation of the provisions of this section does not exceed \$1,000, such person shall be guilty of a misdemeanor and be subject to a fine of not more than \$10,000, or imprisoned for not more than one year, or both."|

"(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, without regard to the provisions of section 17 of Title 15 and section 52 of this title, and the provisions" of Sections 101-115 "of this title.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 11

"(f) This section shall not apply to any contract in force on June 23, 1947, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

"(g) Compliance with the restrictions contained in subsection (c) (5) (B) of this section upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946; nor shall subsection (c) (5) (A) of this section be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits."

EFFECTIVE: 05/28/85

122-1.7.2 Significant Exclusions In Coverage

(1) The coverage of this Act is set forth in the definitions under Title 29, USC, Section 142, which in turn refers to the National Labor Relations Act, Title 29, USC, Section 152. Section 152 (2), (3), and (5) exclude from coverage under the Act, *inter alia*, unions comprised only of the following types of employees:

(a) Agricultural laborers;

(b) Individuals having the status of an independent contractor

(c) Persons subject to the Railway Labor Act (generally railroads subject to the Interstate Commerce Act and interstate airlines).

(d) Employees of Federal, state, or local governments, and wholly owned government corporations, including Federal Reserve Banks.

(2) The Department of Justice has advised that if a public employee union also represents or would admit to membership employees in the private sector, the union may be covered by the Act. In such instances, the U.S. Attorney should be consulted prior to conducting investigation.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 13

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EFFECTIVE: 07/28/87

||122-1.7.4| Procedure

(1) Complaints or information concerning restrictions on payments or loans (Title 29, USC, Section 186) should be discussed immediately with USA to obtain USA's opinion as to whether information received contains sufficient indication of violation to justify investigation.

(2) Matters may be considered possible violations even if payment or agreement to pay is not made, since this section prohibits request or demand being made. Such matters may be considered possible violations should they involve various parties enumerated under this section in addition to only employer and representative of employees. Also, matters may be possible violations if they involve loans made between parties enumerated in this section. Such parties would include middlemen used to relay payments or loans.

(3) A matter which involves fee or charge for unloading an interstate truck, demanded or accepted by parties enumerated in subsection (b)(2) of this section may also involve violation of Hobbs Act.

(4) Welfare Funds - Bureau has investigative jurisdiction under Title 29, USC, Section 186(c)(5), to determine whether any particular welfare fund to which employer contributions are made comes within purview of this subsection of statute and, if so, whether it has been legally established in accordance therewith. Violation of LMRA would be indicated if such fund would not conform to provisions of this statute since contributions to the fund could be considered restricted payments by an employer. In order that USA can make determination as to whether investigation is justified, copies of the following should be obtained and utilized in initial discussion with USA:

(a) Collective bargaining agreement in which provision is made for establishment of welfare fund

(b) Trust agreement establishing fund

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 12

EFFECTIVE: 07/28/87

||122-1.7.3 Potential Problems in Undercover Operations Targeting
Violations of Title 29, USC, Section 186

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 14

(c) Most recent audit report of fund

(d) Data concerning interstate nature of businesses contributing to fund

This material may be obtainable from employers or employer trustees.

(5) Open separate cases regarding each individual, each employer, or each group of employers who may be involved in payments, loans, or demands for same.

EFFECTIVE: 07/28/87

122-1.7.5 Definitions

(1) "Industry affecting commerce" referred to in above section is defined (Title 29, USC, Section 142) as "any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce."

(2) "Commerce" is defined (Title 29, USC, Section 152) as "trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

EFFECTIVE: 07/28/87

122-2 GENERAL INSTRUCTIONS

Interviews with union officials may be conducted on the authority of the SAC, provided all of the following circumstances exist:

(1) Files of field office where interview to be conducted contain no information to indicate such interview would be inadvisable.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 15

(2) Interview is not premature and other available sources of information desired from union official have been exhausted.

(3) Interview is absolutely necessary in interest of conducting complete and thorough investigation.

(4) Interview of a union official who is a subject of the investigation is discussed with and concurred in by the U.S. Attorney.

(5) Interview will not interfere with any other investigation of the official or union.

(6) If interview to be conducted by an auxiliary office, that office must ensure their files contain no information to indicate the interview would be inadvisable.

(7) FBIHQ is notified in advance in the event the interviewee is prominent, extremely controversial, or of such stature to focus national attention on the investigation.

EFFECTIVE: 10/18/88

122-3 REPORTING REQUIREMENTS

(1) |An initial airtel with accompanying LHM (original and three copies) should be submitted to FBIHQ within 60 days if the investigation involves LCN members or associates. The LHM should contain the preliminary opinion of the USA and sufficient identification data on the subject(s) for indexing purposes. |

(2) |A progress letter should be submitted to FBIHQ every 180 days containing a summary of investigation conducted to date and a statement regarding investigation contemplated during the next 180 days. |

(3) |A closing airtel should be submitted to FBIHQ with LHM restating the predication for opening the investigation, summarizing the investigative findings and detailing the disposition of the investigation. The LHM should include the final opinion of the USA. |

(4) |If the investigation involves non-LCN groups (i.e., Asian organized crime, Sicilian Mafia, etc.), advise FBIHQ by airtel

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 122 - 16

with accompanying LHM as described above within 60 days. The results and/or summary should be reported by LHM (original and three copies). |

EFFECTIVE: 10/18/88

122-4 PRIVACY ACT - REQUIREMENTS

(1) When interviewing anyone in the above classification in order to solicit information about himself/herself or his/her own activities, the interviewing Agent must follow the procedures described in Part I, Section 190-5 subparagraphs (2) and (3) of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, Section 190-7 of this manual.

EFFECTIVE: 10/18/88

122-5 CHARACTER - LABOR MANAGEMENT RELATIONS ACT, 1947

EFFECTIVE: 10/18/88

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 125 - 1

SECTION 125. RAILWAY LABOR ACT

125-1 STATUTES

Title 45, USC, Sections 60, 151-163, and 181-188

EFFECTIVE: 07/27/81

125-1.1 Elements

Carrier, its officers or agents, have violated Act if they willfully:

(1) Interfere, influence, or coerce representative of employee or interfere with choice of representative (Section 152 - third paragraph)

(2) Interfere with organization or collective bargaining of employee (Section 152 - fourth paragraph)

(3) Require any person seeking employment to agree or promise to join or not to join a labor union (Section 152 - fifth paragraph)

(4) Change rates of pay, rules, or working conditions of its employees contrary to agreement or to Section 156 of this Act (Section 152 - seventh paragraph)

(5) Fail to notify its employees by printed notices as specified by Mediation Board that all disputes between carrier and its employees will be handled in accordance with requirements as outlined by statute. (Section 152 - eighth paragraph)

EFFECTIVE: 07/27/81

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 125 - 2

125-1.1.1 Definitions (Section 151)

(1) Carrier:

Express company;

Sleeping car company;

Carrier by railroad;

Company controlled by a carrier by railroad and
engaged in activities directly related to transportation by carrier
(other than trucking service);

Airline company;

Term "carrier" does not include street, interurban,
or suburban electrical railway unless it is a part of regular railroad
system.

(2) Employees -

Individuals employed by carrier except coal miners

(3) Representative -

Person, labor union, organization, or corporation
designated by carrier or group of carriers, or by its or their
employees to act for it or them

EFFECTIVE: 07/27/81

125-2 POLICY

(1) The U.S. Department of Justice requires prior
Criminal Division approval of all prosecutions involving Title 45,
USC, Section 152, tenth paragraph, and has instructed all USAs to
summarily decline investigation and/or prosecution of all complaints
unless they contain allegations of egregious carrier interference with
employee rights tantamount to actual or threatened violence, or
involving the payment of bribes to employee representatives.

(2) Upon receipt of complaint or information indicating
possible violation, present to USA to ascertain whether or not an
investigation is warranted.

(3) If USA declines prosecution at the inception, close
case and submit an airtel following guidelines as set forth under
Reporting Procedures.

Sensitive

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 125 - 3

EFFECTIVE: 10/18/88

125-3 REPORTING PROCEDURES

(1) [Advise FBIHQ by airtel within 60 days setting forth the facts of the complaint and a succinct summary of the preliminary investigation conducted.]

(2) [A closing airtel should be submitted to FBIHQ restating the predication for opening the investigation, summarizing the investigative findings and detailing the disposition of the investigation.]

EFFECTIVE: 10/18/88

125-4 PENALTY (Section 152 - tenth paragraph)

(1) Misdemeanor

Fine - minimum - \$1,000; maximum - \$20,000
Imprisonment - maximum - six months or both, for each offense

(2) Each day during which carrier, officer, or agent willfully fails or refuses to comply with paragraphs of Section 152 shall constitute separate offense.

EFFECTIVE: 07/27/81

125-5 RELATED STATUTE - EMPLOYERS' LIABILITY ACT - TITLE 45, USC, SECTION 60

This Act is contained in Title 45, USC, Sections 51-60. Sections 51-59 provides a civil right of action in Federal court by employees of any railroad that is a common carrier against the employer for damages for injury to or death of such employees resulting from negligence of the employer or its agents. Section 60 does not provide jurisdiction for civil relief, however, is a criminal statute within Bureau investigative jurisdiction.

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 125 - 4

EFFECTIVE: 07/27/81

125-5.1 Elements

Anyone violates Act:

(1) Who attempts

(a) by threats, intimidation, order, rule, contract,

regulation, or device whatsoever

(b) to prevent any person from furnishing voluntarily information to a person in interest

(c) concerning facts incident to injury or death of any employee of any common carrier, or

(2) Who discharges or otherwise disciplines or attempts to discipline any employee for furnishing voluntarily to a person in interest information described in (1)(c) above.

EFFECTIVE: 07/27/81

125-5.2 Penalty

Upon conviction shall be punished by fine of not more than \$1,000 or imprisoned for not more than one year, or both.

EFFECTIVE: 07/27/81

125-5.3 Exception to Act

No contract, rule, or regulation with respect to information contained in files of carrier or other privileged or confidential reports shall be voided by this Act.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 125 - 5

EFFECTIVE: 07/27/81

125-5.4 Policy

Handle in accordance with policy in 125-2.

EFFECTIVE: 07/27/81

125-6 CHARACTER - RAILWAY LABOR ACT; RAILWAY LABOR ACT -
EMPLOYERS' LIABILITY ACT (if investigation deals with
125-5) |

EFFECTIVE: 07/27/81

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 131 - 1

SECTION 131. ADMIRALTY MATTER

131-1 STATUTES

Title 46, USC, Sections 741 to 752 and 781 to 799 permits suits in admiralty to be brought by or against the United States or against any corporation owned by it.

EFFECTIVE: 01/31/78

131-2 BACKGROUND

(1) During World War II, Government's vessels were directly operated by War Shipping Administration. In conducting these operations of its vessels, the United States, like other ship operators, used three coordinated classes of agents usual in conducting shipping business; namely;

- (a) The shipmaster
- (b) The ship's husband or general agent
- (c) The consignee of the ship or the berth agent

(2) Each agent is responsible directly to United States as "operating owner" for matters with which he is entrusted.

(3) United States employs experienced shipmasters as agents for physical operation and management of vessels afloat, and experienced steamship operators both as general agents to "husband" ship or manage accounting and other shoreside business operations and as berth agents to manage operation of obtaining and discharging cargo and other port services.

(4) United States sometimes insures vessels it operates in this type of operation. When suit is brought against Government, general agent is sometimes codefendant. The underwriters normally permit general agent to select attorneys to assist USA in defending suit. These attorneys are paid by underwriters who sustain expense of investigation, attorney's fees and judgments. Premiums paid to such underwriters by Government are paid

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 131 - 2

under agreement which contains a recapture clause. If above expenses paid do not exceed premiums paid by Government a refund will be made to Government.

(5) In addition to these operations by War Shipping Administration and its successor, the Maritime Commission and Maritime Administration, and also operation of regular Navy and Army vessels, there are cargo- and passenger-type vessels operated by the Army Transport Service and the Military Sea Transportation Service. These vessels are crewed by civilian Government employees and are not insured.

EFFECTIVE: 01/31/78

131-3 POLICY

(1) Requests for investigation are referred directly to divisional offices by field office of Admiralty Section of Civil Division or the USA. Cases should not be accepted for investigation in which previous investigation was conducted by another agency.

(2) Differentiate between full investigation for trial purposes and administrative investigation or accident report for disciplinary purposes or accident prevention purposes. Many times Navy, Army, or Coast Guard, or more than one of them, will conduct hearings or investigations for express purpose of fixing responsibility for accident thereby enabling them to take necessary administrative action. This type of investigation or hearing cannot be construed as an investigation within the rule that Bureau will not investigate matters previously investigated by another agency.

(3) There are occasions when case has been entirely investigated by either Admiralty attorneys themselves or employees of another Government agency. Subsequently, requests are received to conduct investigation to bring entire matter to logical conclusion. Bureau's experience has shown that this is not conducive to maximum efficiency in investigations. Consequently, no investigation should be conducted.

(4) Where underwriters permit general agent to select his attorneys to handle dispute, such attorneys are reimbursed to locate and interview their own witnesses. Under no circumstances are you to locate witnesses or conduct investigations to locate witnesses for these attorneys even though request emanated from USA's office, without special authorization from FBIHQ.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 131 - 3

(5) While close cooperation with attorney charged with defense of admiralty suit is important and his suggestions as to lines of inquiry should be followed, Agents should not work under supervision of attorney from Admiralty Section of USA's office or a special assistant to the Attorney General handling admiralty matters.

(6) Investigations ordinarily should be confined to cases in which risk is uninsured and Government has to defend case and sustain whatever loss involved. Any requests for investigation in insured cases should be referred to FBIHQ for authority to investigate, with your recommendations.

EFFECTIVE: 01/31/78

131-4 HANDLING OF CASES

(1) Examine and secure, if possible, a copy of report of investigation previously conducted or minutes of hearing.

(2) Refer to steamship companies as the "general agent," not the "operator."

(3) Files should be opened on each individual plaintiff or group of plaintiffs who filed a single suit against U.S. in connection with a particular accident.

(4) After investigation completed, case should be placed in pending-inactive status until matter is settled in court. A closing report should then be submitted. A statistics letter should then be submitted to FBIHQ showing:

- (a) Amount of suit
- (b) Settlement or award

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 131 - 4

131-5 PRIVACY ACT - REQUIREMENTS

When interviewing anyone in the above classification, in order to solicit information about himself or his own activities, the interviewing Agent must follow the procedures described in MIOG: Part I, 190-5, subparagraphs (2) and (3).

When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information) the interviewing Agent must follow the procedure relating to promises of confidentiality as described in MIOG: Part I, 190-7.

EFFECTIVE: 01/31/78

131-6 CHARACTER - ADMIRALTY MATTER

EFFECTIVE: 01/31/78

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 134 - 1

SECTION 134. FOREIGN COUNTERINTELLIGENCE ASSETS (OPERATIONAL
AND INFORMATIVE ASSETS)

134-1 FOREIGN COUNTERINTELLIGENCE ASSETS (OPERATIONAL AND
INFORMATIVE ASSETS)

Information concerning the 134 classification is set forth
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM
MANUAL (NFIPM).

EFFECTIVE: 02/14/97

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 1

SECTION 137. |CRIMINAL|INFORMANTS|(SEE MIOG, PART II,
10-3; LEGAL ATTACHE MANUAL, 6-12;
LEGAL HANDBOOK FOR SPECIAL AGENTS, SECTION 8.)|

||137-1| RESPONSIBILITY FOR THE DEVELOPMENT AND OPERATION OF
INFORMANTS

(1) The SAC of each field office is personally responsible for the establishment of informant coverage concerning criminal activity of interest to the FBI within his/her territory. Particular emphasis is to be placed on the priority investigative matters of the office. |Informants are an integral part of the office's overall criminal informant and cooperative witness intelligence base. The SAC must ensure that his/her Agents make every effort to develop quality informants, and that Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. | The development and operation of informants must be closely supervised, because of the significant contributions which they make to FBI investigations and because of the difficulties inherent in their operation. |Accordingly, the SAC should ensure that informant files are reviewed every 60 days by a Supervisory Special Agent.|

(2) |Each|SUPERVISORY SPECIAL|AGENT is personally responsible for the establishment of informant coverage concerning criminal matters under his/her supervision. Each Supervisor must ensure that Agents under his/her supervision make every effort to develop quality informants, and that their Agents receive the training and guidance necessary to enable them to perform their duties in an effective and efficient manner. Supervisors will review the informant files of those individuals being developed or operated by Agents under their supervision at least every 60 days. The fact that such a review was conducted must be documented in the informant's file on an FD-675 and indexed on the FD-237. The purpose of this review is to ensure that the informant is being operated in accordance with FBI and Attorney General Guidelines, and that adequate coverage is established for the investigative matters under his/her supervision. In fulfilling this responsibility, it is strongly suggested that the Supervisor periodically meet with the informants being operated by Agents under his/her supervision. When a Supervisor is either the case Agent or alternate Agent for an informant, the responsibility for administrative oversight, including the 60-day informant file reviews,

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 2

authorization for the informant to participate in criminal activity and the initial review of informant payments, belongs to the ASAC. |

(3) Each ~~SPECIAL~~ AGENT involved in criminal investigative activities at least 50 percent of his/her time, and not otherwise mitigated, is personally responsible for the development and operation of productive informants to address criminal matters within his/her investigative responsibilities. The SAC of each field office has the prerogative to task Agents not working criminal matters at least 50 percent of their time with the development and operation of their productive informants or liaison contacts. Agents are responsible for ensuring that their informants are operated in a manner which is consistent with FBI and Attorney General Guidelines.

(4) The CRIMINAL INFORMANT PROGRAM MANAGER is personally responsible for ensuring that the program is operated in an effective and efficient manner, consistent with FBI and Attorney General Guidelines.

(5) The CRIMINAL INFORMANT PROGRAM COORDINATOR is personally responsible for ensuring that the SAC and Criminal Informant Program Manager are made aware of all significant issues and developments which impact on the Criminal Informant Program. |

EFFECTIVE: 12/20/93

| 137-1.1 | Moved to 137-2.1 |

EFFECTIVE: 12/20/93

| 137-1.2 | Deleted |

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 3

EFFECTIVE: 12/20/93

|| 137-2 | DEFINITION

An informant is any person or entity who furnishes information to the FBI on a confidential basis. [The FBI will not disclose the identity of an informant, except as provided in 137-4.2.]

EFFECTIVE: 12/20/93

|| 137-2.1 | Categories of Informants

Informants must be classified according to one of the following categories:

(1) Organized Crime (OC) - Those providing information concerning investigations falling within the organized crime program. (Classification 137A).

(2) Top Echelon (TE) - Those providing information concerning [REDACTED]

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(3) Criminal (C) - Those providing information concerning investigations into matters of a general criminal nature. (Classification 137B).

(4) Domestic Terrorism (DT) - Those providing information concerning investigations into persons or groups involved in terrorist activities within the United States, such as bombings and other criminal terrorist activities, on which the FBI has an open and approved case. (Classification 137C).

(5) White Collar Crime (WC) - Those providing information concerning violations falling within the white collar crime program. (Classification 137D).

(6) Drugs (D) - Those providing information concerning investigations falling within the drug program. (Classification 137F).

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 4

(7) Confidential Sources (CS) - Those providing information to the FBI on a confidential and regular basis as a result of legitimate employment or routine access to records, and not as a result of association with persons of an investigative interest to the FBI. The information provided by a Confidential Source must be relevant to authorized FBI investigations. The operation of a Confidential Source must be consistent with FBI and Attorney General Guidelines. A Confidential Source may be paid reasonable amounts for services and expenses. (Classification 137E). |

EFFECTIVE: 12/20/93

137-3 DEVELOPMENT OF INFORMANTS | (See MIOG, Part I,
137-3.1.2(1).)

The following factors must be taken into consideration in determining an individual's suitability to be an informant:

(1) Whether the person appears to be in a position to provide information concerning violations of law which are within the scope of authorized FBI investigative activity.

(2) Whether the individual is willing to voluntarily furnish information to the FBI.

(3) Whether the individual appears to be directed by others to obtain information from the FBI.

(4) Whether there is anything in the individual's background which would make him/her unfit for use as an informant.

(5) Whether the nature of the matter under investigation and the importance of the information being furnished to the FBI outweighs the seriousness of any past or contemporaneous criminal activity of which the informant may be suspected.

(6) Whether the motives of the informant in volunteering to assist the FBI appear to be reasonable and proper.

(7) Whether the information which the informant can provide could be obtained in a more timely and effective manner

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 5

through other sources or by a less intrusive means.

(8) Whether the informant is sufficiently reliable and trustworthy, and whether there is an adequate means by which to verify his/her truthfulness.

(9) Whether the individual appears to be willing to conform to FBI and Attorney General Guidelines regarding his/her operation.

(10) Whether the FBI will be able to adequately monitor and control the activities of the informant.

(11) Whether his/her use as an investigative technique will intrude upon privileged communications or inhibit the lawful association of individuals or the expression of ideas.

(12) Whether the use of the informant could compromise an investigation or subsequent prosecution which may require the Government to move for a dismissal of the case.

EFFECTIVE: 12/20/93

137-3.1 Suitability and Pertinence Inquiries

Prior to the certification of an individual for use as an informant or Confidential Source, a suitability and pertinence inquiry (SI) must be conducted. The purpose of this inquiry is to determine whether he/she is suitable for use as an informant or Confidential Source and the pertinence of the information likely to be provided.

(1) The SI will be conducted for a period not to exceed 120 days. An extension of the initial 120-day period may be authorized by the SAC. The notification of an extension must be entered into CIMS no later than ten working days prior to the conclusion of the initial 120-day period. It must contain the facts or circumstances which preclude completion of the SI during the initial 120-day period. If an individual cannot be certified within 240 days from initiation of the SI, he/she should be closed.

(2) During the SI, the Agent may accept information volunteered by the individual and may make reasonable payments to him/her for services and expenses. In addition, he/she may be paid

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 6

for the information. However, these individuals may not be used to participate in criminal activities or provide substantial assistance in an undercover operation during the SI period.

(3) An informant in the SI stage of development may not be used in a preliminary domestic security/terrorism investigation without the prior approval of a Supervisory Special Agent. Such approval must be recorded in the file. (See 137-4(16).)

(4) SIs should not be used to develop information concerning an individual for the purpose of inducing him/her to become an informant or a Confidential Source.

(5) Any lawful investigative technique can be utilized in determining an individual's suitability to be an informant.

EFFECTIVE: 06/08/94

137-3.1.1 Administration of the Suitability and Pertinence Inquiry

(1) Upon selection of an individual for use as an informant, the field office will assign a 137 field number and an alpha character from the Resource Management Information System. This alpha character will ensure the time devoted to that 137 matter is allocated to the appropriate program. At that time, the field office will also assign a sequential field office symbol number. The symbol number will contain the field office two-letter identifier as a prefix, the symbol number, the letters SI, and the suffix of either an OC, C, DT, WC, CS or D to indicate the primary area in which the informant will be providing informational assistance. Example: BA 12345-SI-WC.

(2) The SI will commence on the date the 137 file is opened.

(3) Specific authority must be obtained from the SAC to conduct an SI for the individuals identified in (a)-(d) below. FBIHQ authority must be obtained prior to converting these individuals to fully operational status. This authority may NOT be obtained on a UACB basis. The specific restrictions concerning the development or operation of these individuals is set forth in Section 137-7. (See MIOG, Part I, 137-3.2(2).)

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 7

- (a) Privileged informants, i.e., attorneys, physicians, members of the clergy, and news media personnel.
- (b) Individuals who are now or were ever in the Witness Security Program.
- (c) Minors (individuals under the age of 18).
- (d) A counselor in a drug treatment program.

(4) Immediately upon the opening of an informant, or upon the conversion of a cooperative witness to an informant, enter all information from the opening memorandum in the CIMS database, with the exception of those individuals identified in 137-7 which may require FBIHQ approval. All memoranda are to contain the following information: (See (5) below and 137-10.)

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(h) A statement, if applicable, that this is a privileged occupation informant or, if applicable, a statement regarding the individual's occupation or status as a Federal or state parolee or probationer, an inmate, a past or current participant in the Witness Security Program, a law enforcement officer, an elected official, a union official, a minor, an employee of a financial institution, active duty military personnel, a school employee or a counselor in a drug treatment program. The statement should set forth

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 8

the specific nature of the occupation, the type of information being received, how the information will be obtained and the justification for operating the source. The specific requirements for opening and operating such individuals are detailed in Section 137-7.

(5) Immediately upon the conversion of a cooperative witness to an informant, the field office must|prepare a memorandum| captioned with the field office two-letter identifier, symbol number and file number. However, individuals identified in 137-7.1 and 137-7.2(2) require prior FBIHQ approval. All such conversion|memoranda|are to contain the information set forth in 137-3.1.1(4). (See MIOG, Part I, 137-10.)

(6) If any of the above information is not available at the time the SI, the information|should|be obtained and|entered into CIMS|prior to the conversion of the individual to a fully operational informant.

EFFECTIVE: 06/08/94

137-3.1.2 Certification of Suitability and Pertinence

(1) At the conclusion of the SI, the supervisor must review the informant's file and make a written finding, based on the factors outlined in 137-3, stating whether the informant appears suitable for use and whether the information likely to be obtained from the individual is pertinent to and within the scope of the FBI's investigative responsibility. The supervisor's certification must be documented in the informant's file and indexed on the FD-237. (See MIOG, Part I, 137-3.2(1)(j).)

(2) If it is determined that the individual is not suitable for use as an informant, the inquiry is to be immediately closed by|memorandum to the source file, which should include the specific reason(s) for the closing of the inquiry. This data should then be entered in the CIMS database. Additionally, if the informant is closed because of unauthorized criminal activity, other than for misdemeanor arrests, a teletype to FBIHQ, Criminal Informant Unit, is to be prepared detailing the date of arrest, the criminal activity, and the disposition of the charges. (See MIOG, Part I, 137-10.)

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 9

EFFECTIVE: 06/08/94

| 137-3.1.3 [Moved to 137-3.1.2]

EFFECTIVE: 12/20/93

137-3.2 Conversion From a Suitability and Pertinence Inquiry
to an Informant (See MIOG, Part I, 137-7.2(1)(a).)

(1) An individual becomes an informant once the
supervisor certifies the individual's suitability. A memorandum is
prepared, and the information is entered in CIMS. The memorandum must
contain the following information in linear paragraph form:

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 10

(j) Certification statement by the field office supervisor described in 137-3.1.2(1).

(k) If handled by a resident agency, identify resident agency.

(1) A statement, if applicable, that the specific requirements for opening and operating individuals detailed in Section 137-7 have been complied with. The statement should set forth specific details on how compliance was obtained.

(2) In the absence of response from FBIHQ, consider the operation of the informant to be approved. However, those individuals identified in Section 137-3.1.1(3)(a) - (d) may not be operated without a specific grant of authority from FBIHQ.

(3) Authority to operate an individual described in Section 137-7.1 must be requested in both the SI and conversion teletypes. Such teletypes may not be sent on a UACB basis.

EFFECTIVE: 06/08/94

137-3.3 |Revised and Moved--See 137-7, 137-7.1, 137-7.1.1, 137-7.1.2, & 137-7.2|

EFFECTIVE: 12/20/93

137-3.4 |Revised and Moved--See 137-6|

EFFECTIVE: 12/20/93

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 11

| 137-4 | OPERATION OF INFORMANTS |

(1) | Every effort should be made to control the informant's activities when acting at the direction of the FBI to ensure that his/her conduct will be consistent with FBI and Attorney General Guidelines. |

(2) | Agents should not exercise improper influence on individuals in an attempt to develop them as informants, including promising immunity or reduction of sentence to those who furnish information. Any representations regarding plea agreements, immunity or other prosecutorial consideration for an informant's assistance are to be made only by the United States Attorney's Office. |

(3) | When it becomes apparent that an informant's role has changed from informational to operational in nature, i.e., making consensual recordings, introducing undercover Agents, purchasing evidence, or otherwise participating in similar operational activities, he/she must be converted to a cooperative witness. (See (15).) Thereafter, he/she must be operated in a manner which is consistent with the Part I, Section 270 of the Manual of Investigative Operations and Guidelines (MIOG). |

(4) | When it becomes apparent that an informant has furnished false information or that there is some other indication of unreliability, the Agent must promptly advise the SAC and provide FBIHQ with a teletype setting forth the factual background which gave rise to the concern. In addition, the teletype should state whether the informant has appeared as a witness on behalf of the Government in any FBI case or has furnished information which was disseminated to another agency. |

(5) | All investigative activity must be made a matter of record in the field office files, including negative contacts, to ensure that the informant's files are accurate and complete. However, contacts with an informant for payment purposes only, during which no positive information is generated, need not be reported as a negative contact on an FD-209. |

(6) | An alternate Agent must be assigned at the time the informant is opened. The alternate Agent must handle some contacts with the informant and must meet or observe the informant by the second contact after conversion. This will ensure the continued use of an informant during the absence or transfer of the case Agent. Any deviation from this requirement must be approved personally by the SAC |

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 12

| and documented in a memorandum in the informant's file. |

| (7) | Constant care should be exercised to avoid any disclosure to anyone which might result in the identification of an informant or cast suspicion upon an informant, except as described in 137-4.2. |

| (8) | Agents have an affirmative responsibility to check the reliability of their informants. |

| (9) | Operation of informants in undercover operations must be in compliance with FBI policy and "Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations." The operational use of informants in long-term cases or undercover operations may warrant use of a personal services contract between the informant and the FBI. This agreement must be coordinated with the substantive unit at FBIHQ and approved by the Contract Review Unit, FBIHQ. In a situation where prosecution is pending for the informant, a Plea Agreement may be warranted between the informant and the United States Government. Close coordination with the United States Attorney's Office is essential in both of these situations. |

| (10) | All representations made to an informant regarding his/her future prosecution in cases in which he/she is a subject, must be made by the United States Attorney's Office, on behalf of the United States Government, and not by the case Agent or others, on behalf of the FBI. |

| (11) | Care must be exercised in handling informants to ensure that they are provided with no information other than that which is necessary to carry out their assignments. Any disclosure of information to an informant obtained from criminal investigative files must have the express approval of the SAC and be documented in the informant's main file. All disseminations to informants must comply with the provisions of the Privacy Act. No dissemination may be made of information which is classified, which identifies other informants or cooperative witnesses, which is Grand Jury material (see Rule 6(e), Federal Rules of Criminal Procedure), or which is otherwise privileged. When it is decided to disseminate information regarding third persons or entities from FBI files, a teletype must be submitted to FBIHQ, on a UACB basis, under the informant's symbol number caption, setting forth the following information: | (See (g) below.) |

| (a) That the SAC of the field office has authorized dissemination of information from FBI criminal investigative files. |

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 13

(b) The nature and seriousness of the matter being investigated.

(c) Specific details outlining the need to furnish the information to the informant.

(d) The specific information which is to be furnished to the informant.

(e) The fact that the information to be released has been coordinated with the appropriate field divisions that may be affected by such dissemination.

(f) In emergency situations, the SAC, or in his/her absence, the ASAC, may authorize the dissemination of such information from criminal investigative files and immediately thereafter advise FBIHQ in the manner described herein.

(g) If it is determined that dissemination of information from either civil or applicant investigative files is necessary in order to give the informant credibility, particularly in investigative matters dealing with loss of life, destruction of property, or which could have other serious consequences, or which may contribute to the solution of a serious crime, the SAC must seek authority from FBIHQ prior to making such a disclosure. The request in this instance must include all information outlined above in 137-4 (11) (a)-(e).

(h) If it is determined that the information from FBI files which is to be given to an informant concerns an individual of no investigative interest to the FBI, the individual should, except in the situations set forth below, be contacted in order to obtain consent to utilize the needed information. Such contact with a third party should not take place if to do so would jeopardize an investigation, disclose the identity of an informant, or when such contact could jeopardize the safety of the individual whose consent is being sought.

(i) When it is not possible or is otherwise inadvisable to obtain the third party's consent, the SAC must obtain authority from FBIHQ to disseminate such information. The request should also set forth the following information:

1. The nature and seriousness of the matter being investigated;

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 14

| 2. | An outline of the need to furnish the
information to the informant;

| 3. | A list of specific information to be
furnished to the informant;

| 4. | Justification for not advising the
individual to whom the information pertains;

| 5. | What effect such disclosure might have on
the individual's reputation in the community; and

| 6. The personal recommendation of the SAC. |

(j) If it is determined by the SAC that dissemination of information being considered for disclosure to an informant contains derogatory information regarding an individual who is or is not of investigative interest to the FBI, the SAC will personally make a recommendation to FBIHQ requesting authority to utilize such information.

(k) In all cases described above, wherein FBIHQ authority is required for dissemination of information from FBI files to FBI informants, this authority will be granted at the Section Chief level. All instances of such dissemination will be reviewed by the Director or Director's designee annually. The Director or Director's designee will personally authorize the dissemination of information to informants which is taken from applicant or civil files. Further, the Attorney General or Attorney General's designee will be notified of such disseminations. |

| (12) | Informants will not be used to obtain information relating to legal defense plans or strategies. When a person has been formally charged with a crime and criminal proceedings are still pending, informants will not be used to deliberately elicit information concerning the crime(s) for which the person was charged. An individual is formally charged when he/she has been charged by indictment or information or after his/her initial appearance following arrest. |

| (13) | Information of value provided by an informant on violations which are not of an investigative interest to the FBI should be disseminated to the appropriate law enforcement agency. If full disclosure is not made for one of the following reasons, then, whenever feasible, the field office should make at least limited disclosure to the law enforcement agency having jurisdiction. | The

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 15

disclosure should be sufficient to apprise them of the nature and extent of the criminal activity. Full disclosure should be made to the appropriate law enforcement agency as soon as the need for restricting dissemination is no longer present. The action taken and the justification for the action should be documented in the informant's main file. Factors to be considered in making such a disclosure are whether the disclosure would jeopardize:

(a) The identity of an informant/cooperative witness;

(b) The life or personal safety of an FBI Agent, informant/cooperative witness or other persons; or

(c) A major ongoing FBI investigation.

(14) Particular care must be exercised regarding drug investigations [REDACTED]

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(15) Increased participation in the investigation of drug trafficking will logically result in expanded use of consensual monitoring techniques. Care must be exercised to ensure that informants do not participate in consensual monitoring activities. An informant must be converted to a cooperative witness before he/she can participate in consensual monitoring activities. Any exceptions to this requirement must receive prior FBIHQ approval. Such individuals should be fully briefed as to the consequences of being converted to a cooperative witness, i.e., that they may be required to testify at trial. (See (3).)

(16) Domestic terrorism informants must be used in compliance with the "Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations." Prior to opening an informant in a Domestic Terrorism investigation, there must be an open and approved Domestic Terrorism case. (See 137-3.1(3).)

(17) Undisclosed participation in the activities of an organization by an informant in a manner that may influence the exercise of rights protected by the First Amendment must be approved

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 16

by FBIHQ, with notification to the Department of Justice.]

(18) [The lawful activities of legitimate organizations are not subject to investigation. However, individual members of such organizations may be independently involved in criminal activity. In order to ensure that the privacy of constitutionally protected activities will be respected, the SAC must approve the use of any individual where:

(a) An informant or Confidential Source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or Confidential Source's formal affiliation will give him/her continued access to nonpublic information related to the legitimate purposes of the organization.

(b) An informant or Confidential Source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities.

(19) In determining whether to use an informant who is engaged in the lawful activities of legitimate organizations, the SAC should consider:

(a) The likelihood of responsible behavior by the informant during the course of his/her organizational membership.

(b) The ability of the FBI to focus the informant's reporting on members of the organization who are involved in criminal activities and to minimize adverse impact on innocent members of the organization.

(c) Whether the use of the informant or Confidential Source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

(20) In order to avoid the appearance of impropriety, Agents are prohibited from engaging in business or financial relationships with informants. If an exemption to this general prohibition is deemed necessary, the SAC must articulate sufficient background to demonstrate to FBIHQ that the relationship will not create an appearance of impropriety or otherwise reflect adversely upon the FBI.

(21) Sensitive circumstances require particular caution.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 17

When a criminal informant is operating under the direction of the FBI in any matter, the handling Agent and field Supervisor will review appropriate Attorney General's Guidelines on Undercover Operations Revised 11/13/92 as well as the MIOG, Part I, Section 137 and consult with FBIHQ in the event that questions arise regarding sensitive circumstances. The following represent sensitive circumstances requiring Section Chief level approval (a discussion of extraordinary criminal activity is provided at 137-5.1(2)):

(a) Any investigative activity which involves the possibility of a criminal informant engaging in activity which involves "sensitive circumstances" as defined herein, must be presented to the appropriate CID section prior to the activity taking place. The section will either authorize the activity or refer it to the Undercover Review Committee for review/approval. For purposes of these guidelines, sensitive circumstances are involved if there is a reasonable expectation that the investigative activity will involve--

1. An investigation of possible criminal conduct by any elected or appointed official, or political candidate, for a judicial-, legislative-, management-, or executive-level position of trust in a Federal, state, or local governmental entity or political subdivision thereof.

2. An investigation of any public official at the Federal, state, or local level in any matter involving systemic corruption of any governmental function.

3. An investigation of possible criminal conduct by any foreign official or government, religious organization, political organization, or the news media.

NOTE: There are some circumstances involving officials in judicial, legislative, management, or executive-level positions which may logically be considered nonsensitive. In such instances, the Section Chief, White-Collar Crimes Section, FBIHQ, who has a national perspective on matters involving public officials, must be consulted for a determination of sensitive circumstances.

4. Engaging in activity having a significant effect on or constituting a significant intrusion into the legitimate operation of a Federal, state, or local governmental entity.

5. Establishing, acquiring, or using a proprietary.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 18

6. Providing goods or services which are essential to the commission of a crime, which goods and services are reasonably unavailable to a subject of the investigation except from the Government.

7. Activity that is proscribed by Federal, state, or local law as a felony or that is otherwise a serious crime -- but not including the purchase of stolen or contraband goods; the delivery or sale by the Government of stolen property whose ownership cannot be determined; the controlled delivery of drugs which will not enter commerce; the payments of bribes which are not included in the other sensitive circumstances; or the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary (this exemption does not include any statement under oath or the penalties of perjury).

NOTE: Some of the above activities, including the controlled delivery of drugs and bribe payments, are subject to specific review and approval procedures. These matters must be coordinated with FBIHQ.

8. A significant risk that a person participating in an investigative activity will be arrested or will supply falsely sworn testimony or false documentation in any legal or administrative proceeding.

9. Attendance at a meeting or participation in communications between any individual and his or her lawyer.

10. A significant risk that a third party will enter into a professional or confidential relationship with a person participating in an investigative activity who is acting as an attorney, physician, clergyman, or member of the news media.

11. A request to an attorney, physician, member of the clergy, or other person for information that would ordinarily be privileged or to a member of the news media concerning an individual with whom the news person is known to have a professional or confidential relationship.

12. Participation in the activities of a group under investigation as part of a Domestic Security investigation or recruiting a person from within such a group as an informant.

13. A significant risk of violence or physical injury to individuals or a significant risk of financial loss.

Sensitive

PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 19

14. Activities which could result in significant claims against the United States arising in tort, contract, or for compensation for the "taking" of property.

15. Untrue representations by a person participating in an investigative activity concerning the activities or involvement of any third person without that individual's knowledge or consent.

EFFECTIVE: 12/20/93

137-4.1 Operation of Informants by Task Force Members (See MIOG, Part I, 137-4.2(5).)

(1) The primary purpose of these guidelines is to ensure that the integrity of the Criminal Informant Program is not diminished as a result of the implementation of the task force concept. These guidelines attempt to balance the need to encourage full cooperation among FBI and non-FBI task force personnel, while maintaining the level of security traditionally afforded to FBI informants. To attain this balance, Agents should limit the disclosure of the identities of FBI informants to non-FBI task force members to those situations where it is essential to the effective performance of their duties.

(2) The SAC of the office of origin may authorize task force members to act as a co-case Agent. Task force members who have been authorized by the SAC to act as a co-case Agent may be present at debriefings, witness payments, and have access to the informant's file. However, an alternate FBI case Agent must be assigned to handle the informant in the absence of the case Agent. The FBI case Agent or alternate Agent is ultimately responsible for the operation and control of the informant, including the responsibility for the preparation and submission of the necessary paperwork. A co-case Agent may meet with an informant without being accompanied by an FBI Agent, provided each such contact is fully documented. While the co-case Agent may make such contacts, it is recommended that the case Agent or alternate Agent be present during meetings with the informant. The presence of an Agent at such meetings not only serves to foster rapport, but also to ensure compliance with FBI and Attorney General Guidelines.

(3) Task force members may not be provided with the

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 20

identity of an FBI informant, unless the SAC has granted appropriate disclosure authority or the SAC has approved him/her to be a co-case Agent for that specific individual. All task force members who have been designated as a co-case Agent must be advised of all relevant FBI and Attorney General Guidelines regarding the development and operation of FBI informants. The fact that the co-case Agent has been provided these instructions should be documented in the informant's file.

(4) In addition to being advised of the relevant FBI and Attorney General Guidelines, a task force member who has been authorized to act as a co-case Agent must be advised that:

(a) He/She is not to make any further disclosure of the identity of the informant, including to other members of his/her department or agency.

(b) He/She is not to prepare, or cause to be prepared, any paperwork or other record, other than official FBI records, regarding their contacts with or payments to FBI informants.

(c) He/She may not provide his/her department or agency with any documents or information which identify or tend to identify an FBI informant.

The fact that these instructions have been given to the task force member must be documented in the informant's file.

EFFECTIVE: 12/20/93

137-4.2 Disclosure Authority (See MIOG, Part I, 137-2 & 137-4(7),
Part II, 3-8.4.)

(1) The SAC, or in his/her absence the ASAC, is responsible for granting disclosure authority to disclose the identity of an informant and will necessarily cause such disclosure of the release of information contained in an informant's file. In the decision-making process it is recommended the SAC consider the following issues:

(a) The specific nature of the information to be disclosed.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 21

(b) The name, title and agency or department of all individuals who will have access to the information.

(c) The specific nature of the request, demand or order which generated the disclosure request.

(d) Whether the disclosure will have an adverse impact on any individuals or FBI investigations.

(e) The SAC's recommendation as to whether the FBI should voluntarily comply with the request or whether an attempt should be made to assert appropriate administrative or legal objections to the request, demand or order.

(2) The response to any subpoena, court order, or any request bearing on the identification of an informant or the production of any informant's file, document, data, or disclosure of the identity of the informant to any individual, must have prior SAC approval. Where appropriate, the field office should have the informant execute a release form (FD-746) prior to the disclosure of the informant's identity or any information provided by the informant. Should the informant refuse to sign the release, the refusal should be noted at the bottom of the form and the informant should be advised that the FBI may nevertheless release the informant information requested, as the informant privilege belongs to the FBI as opposed to the informant. The specific admonishment given to the informant should be recorded at the bottom of the form and the form should be witnessed by two Special Agents.

(3) Any disclosure of information in the informant's file outside of the FBI, should be documented in the informant's main file, including the name of the person to whom the informant's identity was disclosed, the specific nature of the information disclosed and the reason for the disclosure.

(4) Physical possession of the source file is never to be transferred to any individual outside the FBI other than a Federal judge for in-camera ex parte review. Any dissemination of serials from the source's files is to be done only after appropriate redaction and subsequent review by both the Principal Legal Advisor and SAC.

(5) Members of joint FBI task forces may be provided with the identity of an informant on SAC authority consistent with Section 137-4.1.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 22

(6) FBIHQ is to be subsequently advised of the facts and circumstances regarding all disclosure issues.

EFFECTIVE: 12/20/93

137-4.3 Domestic and International|Travel by Informants|(See MIOG, Part II, 23-8.)

(1) DOMESTIC TRAVEL - |An SAC|may authorize travel by|an informant|within the continental United States following coordination with the SAC, or in|his/her|absence, the ASAC, of the field|office|to be visited. |SAC authorization is only required in instances where the informant is traveling on behalf of or at the behest of the FBI.| Travel may not be approved by any other management or supervisory official within the field office. |Normal travel within the continental United States should be confirmed by teletype to the affected divisions.|

(2) INTERNATIONAL TRAVEL - |All informants who travel to an extraterritorial jurisdiction, either on behalf of or at the behest of the FBI, regardless of the number or frequency of such travel, must adhere to the provisions of the "Attorney General Guidelines on the Development and Operation of FBI Criminal Informants and Cooperative Witnesses in Extraterritorial Jurisdictions." The approval mechanism necessary for informants to travel to extraterritorial jurisdictions is set forth in the aforementioned Attorney General Guidelines and may only be obtained on a request-only basis, not on a UACB basis.|

EFFECTIVE: 12/20/93

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 23

||137-5| INFORMANT PARTICIPATION IN AUTHORIZED AND UNAUTHORIZED
CRIMINAL ACTIVITY

| An informant may not be authorized to engage in any activity that would constitute a crime under state or Federal law, if engaged in by a private person acting without the authorization or approval of an appropriate FBI and United States Attorney's Office representative, except as authorized by this section. For the purposes of this section, such activity is referred to as "authorized criminal activity." |

EFFECTIVE: 12/20/93

||137-5.1| Informant Participation in Authorized Criminal Activity
(See MIOG, Part I, 137-5.2(1) & 137-6(1).)|

| (1) Approval for participation by an informant in |
||authorized| criminal activities of an ordinary nature (those not |
fitting the definition of extraordinary criminal activity in |
||137-5.1(2)), | other than the routine purchase of stolen or contraband |
goods, requires authorization at the ASAC level or above. |
Participation in the purchase of stolen goods or contraband can be |
authorized at the level of the field supervisor or above. | For the |
purpose of these guidelines, drugs are contraband. | The authorizing |
official must make a written finding| in advance of any such activity. |
This written finding must be documented in the informant's main file |
prior to the activity and should specify the facts and circumstances |
relied upon in making this determination. In emergency situations, |
the ASAC or the appropriate Supervisory Special Agent may verbally |
authorize the activity and immediately thereafter document that |
authorization in the informant's main file. | The finding must state |
that: (See (3) below.) |

| (a) The activity is necessary to obtain information |
||or evidence for|paramount|prosecutive purposes, to establish or |
maintain credibility|or cover|with|persons associated with criminal |
activity in connection with the investigation,|or to prevent or avoid |
|the danger of|death or serious bodily|injury; or|

| (b) The need for participation in a criminal |
activity by an informant outweighs the seriousness of the conduct |

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines

Part I

PAGE 137 - 24

involved.

(2) | Participation by an informant in authorized extraordinary criminal activity may only be made by the SAC, or in the SAC's absence, the ASAC, after consultation with and the approval of the United States Attorney. Additionally, the participation of an informant in any of these activities may constitute a sensitive circumstance, and therefore will require prior approval of the appropriate Section Chief, FBIHQ. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to FBIHQ and to the Assistant Attorney General in charge of the Criminal Division or his/her designee, in a form suitable to protect the identity of the informant. The United States Attorney's opinion should be confirmed in writing in such a manner as to protect the informant's identity. Extraordinary criminal activity is defined as that activity which may involve a significant risk of violence, corrupt actions by high public officials or severe financial loss to any victim. FBIHQ must be notified by teletype of such authorizations, as well as the concurrence of the United States Attorney. (Sensitive circumstances are discussed in detail at 137-4(21). (See (1) above & (3) below.)|

| (a) | If the SAC reasonably determines that an emergency situation exists requiring an informant's participation in extraordinary criminal activities prior to being able to obtain the United States Attorney's opinion, the SAC may approve the participation on his/her own authority but shall immediately thereafter notify the United States Attorney, |FBIHQ| and the Assistant Attorney General, Criminal Investigative Division or his/her designee. | Situations wherein the SAC could utilize such authority are: to protect loss|of life or|substantial property, to apprehend or identify a fleeing offender, or to protect the imminent loss of essential evidence. In such emergency situations, the SAC shall attempt to consult by telephone with a senior member of the|United States Attorney's|Office before approving the informant's participation.

(3) | Written findings made pursuant to 137-5.1(1) and (2) must be documented in the informant's main file prior to the activity and should specify the facts and circumstances relied upon in making this determination, the dates for which the criminal activity has been authorized, the concurrence of the United States Attorney and a description of the anticipated criminal activity expected to take place. In emergency situations, the documentation should be done as soon as possible following the activity.|

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 25

(4) When it is anticipated that the informant will participate in authorized criminal activity incident to a Group I undercover operation, approval must be given in advance by an Assistant Director on the recommendation of the Criminal Undercover Operations Review Committee, except that the Deputy Director's approval is required for participation in authorized criminal activity involving a significant risk of violence or physical injury to individuals. All approvals must be recorded in writing.

(5) When approval is granted for an informant to participate in criminal activity, he/she will be instructed that under no circumstances are they to participate in any act of violence, initiate a plan to commit criminal acts or use unlawful techniques to obtain information for the FBI.

(6) The field office should, to the extent practicable, ensure that:

(a) The adverse effect of the activity on innocent individuals is minimized.

(b) The informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he/she will participate.

(c) The informant's participation in the activity is closely supervised by the FBI.

(d) The informant does not directly profit from his/her participation in the activity.

(7) Any proposal by a Confidential Source to engage in otherwise criminal activities in order to gather information changes the status of that individual from Confidential Source to informant.

(8) The alternate contacting Agent or second witnessing Agent must be present whenever the informant is briefed regarding the nature and extent of his/her authorized criminal activity unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present.

(9) The SAC must review all such criminal activity by informants at least every 90 days. The SAC's review must be documented in the informant's main file or the appropriate control file.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 26

EFFECTIVE: 12/20/93

137-5.2 Informant Participation in Unauthorized Criminal Activity

(1) While carrying out an FBI assignment, an informant or Confidential Source has a unique relationship with the FBI; therefore, his/her participation in any unauthorized activity in connection with an FBI assignment, even of a minor character, must be carefully scrutinized. Hence, whenever it is determined that an informant or Confidential Source has participated in criminal activity which was not authorized pursuant to Section 137-5.1, the field supervisor will ensure that the appropriate law enforcement or prosecutive authorities are advised of any violations of law and make a written determination of whether continued use of the informant is justified. This determination should be documented in the informant's main file.

(a) Whenever a field office learns of the commission of an unauthorized criminal act by an informant or Confidential Source, FBIHQ must be notified immediately. A recommendation must be made whether to notify the appropriate state or local law enforcement or prosecutive authorities of any violation of law, as well as whether continued use of the informant or Confidential Source is justified. In situations where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the field office must advise FBIHQ of:

1. The facts and circumstances surrounding the informant's or Confidential Source's criminal violation;
2. The nature of the notification or request that was made to state or local law enforcement or prosecutive authorities, and the justification for the notification;
3. The nature of the information gained as a result of the violation; and
4. What use will be made of any information gathered through the violation of law.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 27

Thereafter, the FBIHQ will make a specific determination on whether to continue use of the informant or Confidential Source.

(b) A field office must notify FBIHQ whenever it learns of participation by an informant or a Confidential Source in an act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. A secure teletype must be submitted to FBIHQ setting forth the facts and circumstances concerning the informant's violent activity, what notification or request has been made to state or local law enforcement or prosecutive authorities, what use will be made of any information gathered through the activity; and, whether the office will continue to use the informant.

(2) In determining whether to notify appropriate Federal, state or local law enforcement or prosecutive authorities of an informant's/Confidential Source's criminal activity, the following factors should be considered:

(a) Whether the crime was completed, imminent or inchoate.

(b) The seriousness of the crime in terms of danger to life and property.

(c) Whether the crime is a violation of Federal or state law, and whether a felony, misdemeanor or lesser offense.

(d) The degree of certainty of the information regarding the criminal activity.

(e) Whether the appropriate authorities already know of the criminal activity and the informant's/Confidential Source's identity.

(f) The effect of notification on FBI investigative activity.

(3) Under no circumstances will the field office take any action to conceal a crime by an informant/Confidential Source.

(4) No factual representations or recommendations may be made regarding the disposition of any charges which may stem from unauthorized criminal conduct by the informant without prior FBIHQ authorization.

Sensitive

EFFECTIVE: 12/20/93

1137-6 | GUIDELINES AND INSTRUCTIONS TO BE DISCUSSED WITH
INFORMANTS

The following matters must be made clear to the informant at the earliest opportunity, but in no event, later than the second contact after being converted. These admonishments must be reiterated at least annually or at any time there is an indication that there is a need. The fact that the informant has been so advised or readvised must be documented in his/her file and indexed on the FD-237. The admonishments are as follows:

(1) ASSISTANCE VOLUNTARY - The informant's assistance is strictly voluntary and will not exempt him/her from arrest or prosecution for any violation of law except where such violations were approved by the appropriate FBI official pursuant to Section 137-5.1.

(2) NOT EMPLOYEE OR UNDERCOVER AGENT - The informant is not and may not consider or represent himself/herself to be an employee or undercover Agent of the FBI.

(3) CONFIDENTIALITY - The informant's relationship must be maintained in the strictest confidence and he/she must exercise constant care to ensure that the relationship is not divulged to anyone.

(4) REPORT POSITIVE INFORMATION - The informant must report all positive information, both inculpatory and exculpatory, as promptly as possible.

(5) JURISDICTION - An informant who is providing information relating to specific criminal violations is to be advised of the pertinent legal issues related to the FBI's jurisdiction in that area.

(6) ACTS OF VIOLENCE - Informants will not participate in acts of violence. When asked to participate in an act of violence or when an informant learns of plans to commit an act of violence, the informant is to take all reasonable measures to discourage the violence, and report the incident to his/her handling Agent at their earliest opportunity.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 29

| (7) | UNLAWFUL TECHNIQUES - Informants will not use unconstitutional or unlawful techniques (e.g., breaking and entering, electronic surveillance, opening or tampering with the mail) to obtain information for the FBI.

| (8) | PLAN CRIMINAL ACTS - Informants will not initiate a plan to commit criminal acts.

| (9) | PARTICIPATION WITH SUBJECTS - Informants will not participate in criminal activities unless specifically authorized by the FBI.

| (10) | PAYMENTS ARE INCOME - If the informant is to be paid, he/she must be advised that the payments are taxable for Federal income tax purposes.

| (11) | GRANT OF CONFIDENTIALITY - The informant must be advised that the FBI will not disclose either his/her identity or the information provided by him/her on a confidential basis which tends to identify him/her, unless necessitated by compelling operational, litigative or prosecutorial considerations.

| (12) | CONFIDENTIAL SOURCE - Need only be advised that he/she is not acting as an agent or employee of the FBI and that under no circumstances should he/she use unlawful techniques to obtain information. The fact that a Confidential Source has been so advised must be documented in the main file and indexed on the FD-237.

EFFECTIVE: 12/20/93

| 137-7 | RESTRICTIONS REGARDING THE DEVELOPMENT AND OPERATION OF INFORMANTS (See MIOG, Part I, 137-3.1.1 (3) & (4), 137-3.2(1)(1) & Part II, 3-8.6.)

| SAC authority is required to initiate an SI on an individual and FBIHQ authority is required to convert that individual to a fully operational privileged informant. For the purposes of this section, the following individuals are to be considered privileged informants: any person admitted to practice law in state court, any licensed physician, any practicing member of the clergy, and any member of the news media. | Privileged informants that have been

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 30

certified as to suitability must be authorized by the Assistant Director, Criminal Investigative Division (CID), before they can be converted to a fully operational informant. A field supervisor may approve the acceptance of information from a privileged individual on a one-time basis where the information is not privileged and is not collected at the behest of the FBI.

EFFECTIVE: 12/20/93

137-7.1 Restrictions Concerning the Development and Operation of Privileged Occupation Informants (See MIOG, Part I, 137-3.1.1(5), 137-3.2(3), 137-7.1.2 & Part II, 3-8.6.)

(1) Acceptance of information from a privileged individual on a one-time basis, where the information is not privileged and is not collected at the request of the FBI, may be approved by a field supervisor.

(2) The operation of a privileged informant may constitute a sensitive circumstance and therefore may require the prior approval of the appropriate Section Chief, FBIHQ.

(3) The privileged informant's value to FBI investigative interests should be evaluated in terms of possible Fifth and Sixth Amendment and conflict of interest issues. These individuals will only be approved for operation when it can be clearly articulated that their assistance will be of such significant value to the FBI's law enforcement mission that it outweighs the sensitivity of these areas of concern, and the assistance cannot be reasonably obtained in another manner.

(4) The Principal Legal Advisor must review the results of every contact with all privileged informants to ensure that all legal or ethical issues are identified and properly addressed.

(5) An individual in the privileged category may not be operated as an informant if he/she would be willing to provide information if his/her confidentiality were not protected.

(6) Privileged informants must be advised that:

(a) In seeking information from him/her, the FBI is

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 31

not requesting him/her to violate any legal obligation of confidentiality.

(b) He/She should not furnish any information to the FBI which would violate such a privilege.

(c) The FBI will not knowingly give him/her any assignments which will cause a violation of his/her legal or ethical obligations.

The fact that these advisements were given must be documented in the informant's file.

(7) If it is determined that the informant has furnished information which violates his/her obligation of client confidentiality, such information should be recorded for the purpose of:

(a) Establishing that the information was received and that the issue was recognized.

(b) Documenting that no use was made of the information.

(c) Acknowledging that the information received was relevant to an FBI investigation, and that the investigation proceeded independent of such information.

(8) Use of privileged or other client-related information will be permitted if it is furnished regarding a situation wherein there could be loss of life, serious physical injury, destruction of property of substantial value, result in other serious consequences or which may contribute to the solution of a serious crime. If such a situation does develop, depending upon the exigency of the circumstances, the United States Attorney's Office and FBIHQ must be consulted prior to any use of the privileged information. If, because of exigent circumstances, consultation with the United States Attorney's Office and FBIHQ is not possible prior to the use of the information, both the United States Attorney's Office and FBIHQ must be advised immediately after that use. Only in the most urgent of circumstances should FBIHQ and the United States Attorney's Office prior concurrence not be obtained. Use of privileged information is to be thoroughly documented and will be allowed only in serious situations where to ignore the information could be construed as neglect of duty, notwithstanding the fact that such information may not be admissible in a court of law. (See MIOG, Part I,

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 32

137-7.1.1(1.)

(9) Privileged informants who have not made significant contributions to FBI investigative matters within any six-month period should be closed. This will preclude the continued operation of marginal privileged informants and limit contacts with privileged sources to those which are fully justified by operational considerations.

(10) Any change in a privileged informant's status in the community must be immediately brought to the attention of FBIHQ. These changes would include appointment or election to public office, or extensive media attention.

EFFECTIVE: 12/20/93

137-7.1.1 Additional Restrictions Regarding the Operation of Attorneys (See MIOG, Part II, 3-8.6.)

The operation of an attorney as an informant presents a significant risk of creating the perception of conflict of interest due to his/her obligation to fully represent his/her client. Due to the sensitivity of these circumstances, the operation of attorney informants must be in strict adherence with the following instructions:

(1) EXCEPT FOR EXTRAORDINARY SITUATIONS AS SET FORTH IN 137-7.1(8), NO INFORMATION MAY BE ACCEPTED FROM AN ATTORNEY INFORMANT REGARDING ANY OF HIS/HER CRIMINAL OR CIVIL CLIENTS REGARDLESS OF WHETHER OR NOT THE INFORMATION BEING PROVIDED IS DERIVED FROM A PRIVILEGED COMMUNICATION. The attorney informant should be specifically advised not to furnish any information, privileged or otherwise, concerning his/her clients. THIS RESTRICTION APPLIES TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT DURING THE ATTORNEY-CLIENT RELATIONSHIP AND DOES NOT APPLY TO INFORMATION RECEIVED BY THE ATTORNEY INFORMANT PRIOR TO OR SUBSEQUENT TO THE ATTORNEY-CLIENT RELATIONSHIP.

(2) No payments for services are to be made to an attorney with a criminal defense practice without prior FBIHQ approval.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 33

EFFECTIVE: 12/20/93

137-7.1.2 Additional Restrictions Regarding the Operation of
Members of the News Media (See MIOG, Part II, 3-8.6.)

In addition to the restrictions set forth in Section 137-7.1, information obtained from privileged informants who are members of the news media must be relevant to the FBI's investigative responsibilities. These individuals are not to be utilized for the purpose of controlling or manipulating the news media. Further, these individuals must be advised that the FBI will not knowingly influence or attempt to influence the editorial policy of the news media.

EFFECTIVE: 12/20/93

137-7.2 Restrictions Concerning the Operation of Specific
Individuals as Informants Based on their Employment
or Status (See MIOG, Part I, 137-10.)

(1) The following informants may be authorized for operation by the SAC, or an individual designated by him/her, if the requirements set forth below are met and set forth in the opening teletype. This authorization must be noted in the opening teletype. Where such approval has been granted, the teletype may be submitted on a UACB basis. If the requirements cannot be met, these individuals may be opened on a request-only basis, not on a UACB basis.

(a) FEDERAL OR STATE PROBATION OR PAROLE.

Individuals on federal or state probation or parole may not be operated as informants in violation of the conditions of their probation or parole. It is required that these conditions be determined during suitability and pertinence inquiries and the results of this determination be documented in the conversion teletype as described in 137-3.2. In those cases where an individual would be in violation of probation or parole restrictions, if operated as an informant, the field office should obtain the necessary probation or parole official's permission to operate the individual. This authorization must be documented in the informant's file. In those

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 34

instances where an individual's probation or parole officer cannot be contacted, FBIHQ must be advised of the reason why this contact cannot be made, the need by the field office to use the individual and a request for FBIHQ to grant authority for use of the individual as an informant. Where a field office deems that it would be inappropriate to contact either the source's probation or parole officer or sentencing judge, the field office may request FBIHQ authorization to operate the individual without the aforementioned concurrences. Such a request must set forth sufficient facts to justify a deviation from the aforementioned policy.

The United States Parole Commission (USPC) requires that parolees and mandatory releases agree in writing not to act as informants or in other similar capacities for a law enforcement agency. This requirement does not preclude accepting information from such persons as citizen complainants. These individuals may be considered for development as informants when the period of their parole has expired or in those cases wherein the field office has obtained the necessary parole official's permission and this is documented in the conversion teletype described in 137-3.2. The operation of any federal parolee must be in compliance with the USPC rules and regulations.

(b) INMATES. The use of a cellmate informant, that is, one who has been placed in the cell for the purpose of gathering information regarding pending charges, requires the prior approval of FBIHQ and the concurrence of the prosecuting United States Attorney's Office. Cellmate informants may only be used as listening posts and may not question an accused or stimulate conversations concerning charged offenses. (See Legal Handbook for Special Agents, 8-3.3.2(1).) Any use of federal inmates, or anyone in the custody of the U.S. Bureau of Prisons, even if held in a local holding facility, which results in the release or transfer of an inmate informant, in authorized criminal activity, or consensual monitoring involving the inmate wearing a body recorder, must have prior approval of Office of Enforcement Operations (OEO), Criminal Division, Department of Justice (DOJ). This approval should be requested by teletype to the FBIHQ substantive unit subsequent to opening and prior to utilization of the source. (If an informant becomes operational, the informant should be converted to a cooperative witness. Operational is defined as wearing a body recorder, the introduction of an undercover Agent, etc.) In order to facilitate the submission of the appropriate information in the request to DOJ, OEO, the following outline is provided so that a well-informed decision can be made:

1. Location of prisoner;

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 35

2. Identifying data on the prisoner, e.g., date of birth, place of birth, Bureau of Prisons number, Social Security Number, and physical description;
3. Charges for which prisoner is incarcerated; including date, sentence, judicial district, and sentencing judge;
4. Copy of prisoner's arrest record or summary of the arrest record must be submitted;
5. The necessity for utilizing the prisoner in the investigation including what other techniques have been tried and why they have failed;
6. The name of the investigation and his/her role in the crime or organization under investigation;
7. Describe the prisoner's relationship or association with the target(s) under investigation;
8. Are the targets aware of the prisoner's incarceration status? If so, what is the prisoner's cover story to avoid jeopardizing his/her safety or the investigation?
9. Detailed explanation of the operational role the prisoner is to perform;
10. Describe the security measures to be taken to ensure the prisoner's safety, alleviate risk to the public, and prevent the prisoner's escape;
11. Length of time the prisoner will be needed in the activity;
12. Will the prisoner be needed as a witness and will he/she be considered for the Witness Security Program?
13. Will a prison redesignation be necessary upon completion of the operational role?
14. Will the prisoner remain in the custody of the investigative agency; be housed in jails or similar facilities at certain times; or will the prisoner be unguarded except for their own protection?
15. The total number of law enforcement agents

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 36

assigned to the security detail;

16. Has the request been endorsed by the appropriate federal/state prosecutor? If not, provide a detailed explanation. Please provide name, phone number, and location of the Assistant United States Attorney endorsing the request.

17. An interim progress report should be submitted if a continuance, beyond date originally projected for conclusion, is necessary, and a detailed progress report should be submitted at the conclusion of activity;

18. Sealed court order(s) must be obtained after the request has been approved if the prisoner is unsentenced or on writ status.

(c) SWORN LAW ENFORCEMENT OFFICERS. The opening of a sworn law enforcement officer as an informant will be permitted only in those instances where the individual is providing information in investigations into corruption within his/her employing governmental entity. A statement regarding the specific nature of the information to be provided and the reason why the information cannot be furnished to his/her department must be included in the opening teletype.

(d) ELECTED/APPOINTED GOVERNMENT OFFICIALS (FEDERAL, STATE AND LOCAL). These individuals must be advised that the FBI will only accept information concerning alleged criminal violations of law and will not accept information concerning the political beliefs or personal lives of individuals within their governmental body, or the private or confidential deliberations of that body, unless violations of law are occurring. Further, the FBI will not knowingly influence or attempt to influence any action of the governmental body unless in furtherance of a compelling investigative interest and authorized by the appropriate FBIHQ official. The fact that these advisements were given must be documented in the informant's file and set forth in the opening teletype.

(e) UNION OFFICIALS. These individuals must be advised that the information which they provide is subject to the reporting provisions of the Employee Retirement and Income Security Act and that the FBI is not interested in, nor will it accept, information concerning legitimate union activities. Further, the FBI will not knowingly influence or attempt to influence any action of the union.

(f) FINANCIAL INSTITUTION EMPLOYEES. These

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 37

individuals must be briefed on the provisions of the Right to Financial Privacy Act and advised that the FBI will not knowingly accept information which violates the provisions of that Act.

(g) SCHOOL EMPLOYEES. These individuals must be advised of the provisions of Title 20, USC, Section 1232(g), commonly known as the Buckley Amendment. This statute generally prohibits educational institutions and their employees from releasing information from records which they maintain on students of the institution. Such informants must be advised of the provisions of the law, even if the information they are providing is obtained independent of their employment.

(h) ACTIVE-DUTY MILITARY. The provisions of the Posse Comitatus Act, Title 18, USC, Section 1385, may prevent the use of these individuals in certain types of investigations. These individuals must be advised that the FBI will neither seek nor accept assistance or information which will violate the provisions of the Posse Comitatus Act.

(2) The operation of the following informants may only be authorized by FBIHQ, not on a UACB basis. The opening communication should clearly articulate that their assistance will be of such significant value that it outweighs the sensitivity of operating the individual and that the assistance cannot be reasonably obtained in another manner. (See MIOG, Part I, 137-3.1.1 (5).)

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(a) WITNESS SECURITY PROGRAM (WSP). The operation of a current or past participant in the WSP requires the approval of the Department of Justice's Office of Enforcement Operations (OEO). (See MIOG, Part II, Section 27-13.2.) A teletype with the [REDACTED] as the subject must be submitted to the Sensitive Information Unit, FBIHQ, Room 4944, with the following information:

1. Name of source or person relocated (source may be a witness or a person relocated as a result of witness's cooperation such as a family member, boyfriend, or girlfriend).

2. Alias(es) used by the witness.

3. Approval of the appropriate headquarters' official of the concerned agency (will be given by the SIU when communication is forwarded to OEO).

4. If the source is not a witness, relationship of source to the witness, and name of witness.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 38

5. Identifying data on source, e.g., sex, date of birth, place of birth, Social Security Number, and Bureau of Prisons Register Number (if applicable).

6. Source's employment; if unemployed, how source is subsisting; and extent this activity jeopardizes source's livelihood.

7. Name(s) of target(s) of investigation and their role in the crime or organization under investigation.

8. Significance and/or scope of the criminal activity and target(s).

9. Source's relationship or association with the target(s) under investigation.

10. Necessity of utilizing source in investigation, including details about nature of use being requested.

11. Consideration of alternatives to source's use and indication of why they will not work.

12. Detailed account of source's involvement in criminal activity subsequent to being approved for WSP services.

13. Appraisal of whether request centers on source's new criminal involvement, and how source is aware of new criminal activity.

14. The benefit that source expects in return for his/her cooperation.

15. Statement as to whether source's activity requires him/her to testify.

16. Indication as to whether source completed testimony for which he/she was placed in the WSP. If known, district and sponsoring AUSA.

17. If known, details about other agencies' use of source since relocation.

18. Probation or parole status of source
(indicate whether U.S. Probation Office and U.S. Parole Commission

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 39

should be notified).

19. Security measures to be taken to ensure source's safety and minimal risk to the public.

20. Use of electronic devices, body recorders, etc. (cooperative witnesses only).

21. Name of case Agent or Agent specifically responsible for safety of source.

22. Length of time source's assistance will be needed regarding this investigation.

23. Whether source is incarcerated; if so, location and whether prosecutor and/or judge should be advised.

24. Whether the source will remain in custody of the FBI, be housed in jails or similar facilities at certain times, or whether source will be unguarded except for his/her own protection.

25. If the source is incarcerated, whether a prison redesignation will be necessary upon completion of activity.

26. Whether source is represented by counsel and whether counsel concurs with activity.

27. If applicable, whether activity has been endorsed by appropriate federal/state prosecutor; if so, name, telephone number and location of prosecutor (cooperative witnesses only).

28. Whether source's activity will require submission of new WSP application and subsequent relocation.

29. Whether the source will be charged/indicted in this investigation.

(b) MINORS (INDIVIDUALS UNDER THE AGE OF 18). In requesting authorization to use a minor as an informant, the field office must indicate whether parental consent has been obtained for his/her use. If such consent has not been obtained, state whether such consent can or will be obtained. If obtaining consent from his/her parents is not feasible, the field office must state the justification for use of such an individual in the absence of parental consent.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines.
Part I

PAGE 137 - 40

(c) BUREAU OF PRISONS (BOP) PERSONNEL. Utilization of BOP personnel requires approval of the Department of Justice's OEO. In submitting a request for review by OEO, the field must provide the appropriate FBIHQ substantive unit with the following information:

1. Name of BOP employee.
2. Location and job title of employee.
3. Necessity of utilizing the employee in the investigation. If other techniques are available, an explanation is required. Detail the activity in which the employee is to be engaged and the location and length of time the employee will be needed. Advise specifically whether the employee will be required to contact target(s), relatives, friends and associates outside the institution in connection with this investigation.
4. Name(s) of target(s) of the investigation and their role(s) in the crimes or organization under investigation.
5. Security measures to be taken to ensure the employee's safety.
6. Whether the employee will be needed as a witness.
7. Whether a job transfer will, or may, be necessary upon completion of the activity.
8. Whether the activity will jeopardize the employee's family, and if so, how.
9. Name(s), title(s) and location(s) of any BOP personnel and phone numbers with whom this matter has been, or will need to be discussed.

This does not apply to routine interviews of BOP personnel where the employee is not asked to perform an operational role in furtherance of an FBI investigation.

(d) COUNSELORS IN DRUG TREATMENT PROGRAMS. Federal law prohibits the opening of these individuals for the purpose of obtaining information on matters relating to the counseling of patients.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 41

EFFECTIVE: 07/30/97

137-8 PAYMENTS TO INFORMANTS (See MIOG, Part II, 32-1.)

(1) The SAC is personally responsible for all payments to informants. All payments must be requested by the submission of a draft request form and a memorandum to the SAC. The memorandum must contain the case title, total amount previously paid to the informant during the Fiscal Year (FY), the date the informant file was opened, and the information justifying the requested payment. These requests should be closely scrutinized to ensure that they are commensurate with the value of the information received. This responsibility rests with the field office management.

(2) Payments to informants for services and expenses must be made from his/her case funds based on SAC or, in his/her absence, ASAC authority, and not from the substantive case fund payment authority. In resolving whether a payment should be charged to the informant or substantive case fund, it is useful to determine who derived the primary benefit of the payment, and whether the expense was incurred as a direct cost of operating the informant. Where the payment is made for the purpose of conferring a benefit to the informant or is made as a direct result of operating the informant, it should be charged against the informant's case fund authority and not the substantive case authority.

(3) The alternate contacting Agent or a second witnessing Agent must be present at all payments to an informant unless strong written justification can be given to and approved by the SAC, or in the absence of the SAC, the ASAC, not to have a second Agent present.

(4) An individual who has requested confidentiality may be paid one time for services rendered and/or expenses incurred under SAC authority without being opened as an informant. This one-time payment under SAC authority can be up to [REDACTED]. Should the person be paid a second time, he/she should be opened as an informant. This one-time payment policy may be waived by FBIHQ when necessary to maintain an individual for security or trial purposes. Payments to one-time nonsymbol sources are charged to the field office informant budget using the substantive case file number. Payments are therefore made from the case authority.

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 42

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[REDACTED] (5) The SAC or, in his/her absence, an ASAC, may approve payments to an informant for expenses in obtaining information, the performance of services, or information on a C.O.D. basis up to [REDACTED] per FY. In situations where [REDACTED] an informant will incur expenses, such as travel, in connection with his/her operation or in order to obtain information for the FBI, the SAC may authorize payment of an advance for these expenses prior to the expenses actually being incurred by the informant. Where funds are advanced in this manner, the field office must ensure that the actual expenses incurred by the informant are determined and reconciled with the advance of funds. When the total of such payments to an informant reaches [REDACTED] additional payment authority must be obtained from FBIHQ before any further payments or advances can be made. Subsequent requests for additional payment authority should be submitted in increments of [REDACTED] or the amount required for the current FY, whichever is less. Such requests may exceed [REDACTED] where operational considerations necessitate an enhanced authority level. In these situations, the request should set forth adequate justification for the enhanced authority level.

[REDACTED] (6) The request for an additional [REDACTED] payment authority should be submitted by secure teletype to the CIU, FBIHQ, under the pertinent informant caption on a request-only basis. The teletype must include:

[REDACTED] (a) A specific request that an additional [REDACTED] payment authority be granted.

[REDACTED] (b) The total amount paid to the informant to date for the current FY, broken down by services, expenses and total payments.

[REDACTED] (c) A concise summary of the information or services provided by the informant, in chronological order, for which he/she has been paid since the last authorization. This summary should include the title and character of each case, the general nature of the information or service provided by the source in the investigation, and a statement as to the value of the information or service provided by the source, including statistical accomplishments attributed to the informant as a result of the information provided. Immediately following this information, set forth a separate paragraph showing the dates of payments under the prior authorization and the amount paid on each date, divided into the amounts paid for services and the amounts paid for expenses. For the benefit of the requesting Agent, this information is available in the field office through on-line inquiry of the Financial Management System (FMS).

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 43

| (7) Payments to Informants by an Auxiliary Office (AO)

When an informant provides services to an office other than his/her Office of Origin (OO), care must be taken to record each payment using the informant's file number. This may be accomplished in one of two ways:

(a) If the individual is expected to provide services or information to another office for an extended period of time, close the informant file at the OO and reopen it at the new OO.

(b) If the individual is providing only temporary assistance, the AO may make payment(s) through the draft system using the informant's file number assigned by the OO up to the maximum amount authorized for the FY. The AO must coordinate with the OO to ensure that payments do not exceed the informant's authorization level.

(c) Note that payments to informants will be charged to the informant budget of the field office making the payment.

| (8) Lump-sum payments

(a) Each field office is encouraged to submit requests for lump-sum payments for the informant at the conclusion of any case in which he/she has made significant contributions to FBI investigative matters. These requests must be personally approved by the SAC or, in his/her absence, the ASAC. The SAC and ASAC should closely review lump-sum requests to ensure that all payments are justified and that the amount requested is appropriate under the circumstances. Requests for lump-sum payments should be furnished to FBIHQ by teletype captioned with the informant's symbol number, sent to the attention of the CIU, FBIHQ.

(b) Furnish the title and character of the case and all pertinent details which will justify a lump-sum payment. Each funding request concerning any investigative program will be considered strictly on the merits of the case and the significance of the informant's contributions to that investigation. The following issues must be addressed in any request for a lump-sum payment:

1. Significance of the investigation.

2. Degree of assistance rendered by the informant. The following factors should be addressed:

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 44

- a. Whether the informant was responsible for the initiation of the case.
- b. Quality of the information furnished by the informant.
- c. Whether the information was available from other sources.
- d. Length of time which the informant devoted to the investigation.
- e. Whether the informant participated in consensual monitoring activities.
- f. Whether undercover Agents were introduced by the informant.
- g. Potential risk for violence toward the informant or his/her family.
- h. Whether the informant was able to continue his/her normal employment while assisting in the investigation.
- i. Whether the informant suffered any financial loss as a result of his/her cooperation.
- j. Value of seized or forfeited property obtained as a result of his/her cooperation.
- k. Statistical accomplishments attributed to information or assistance provided by this informant.
- l. Whether the informant will testify.
- m. Potential for long-term investigative contributions by the informant.
- n. If the informant is to testify, whether the Federal prosecutor concurs in the payment.
- o. Whether the informant has or will receive any payment for services or expenses from any other law enforcement agencies in connection with the information or services

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 45

which he/she provided to the FBI. |

| (9) | Regular Pay

Recommendations for informants to receive regular payments should contain full justification and a proposed maximum amount to be paid to the informant on a regular basis. Such requests should contain the same information as provided in a request for additional payment authority and should be submitted by teletype to FBIHQ. The request for regular payment authority should specify the length of time for which the authority is sought and the specific reasons why the individual should be paid on a regular basis rather than by SAC authority. Communications requesting renewal of regular payment authority must be submitted at least one week prior to the expiration of the currently authorized period.

| (10) | Receipts

(a) A receipt must be obtained from all informants at the time of each payment. The receipt is to be signed by the informant using his/her code name, and witnessed by the case Agent or alternate Agent and a witnessing Agent. Both the paying Agent and the witnessing Agent must sign the receipt for all informant payments. Approval for not obtaining a receipt would be rare and must have the personal endorsement of the SAC or, in his/her absence, the ASAC. In the event that a receipt cannot be obtained, a certification, signed by the paying Agent and witnessing Agent, may be submitted as documentation for the payment. |

| (b) | If it becomes necessary to make a correction on a receipt, such corrections must be initialed by the informant using his/her code name initials, and not by the Agent.

| (c) | Receipts should be forwarded to FBIHQ in accordance with the provisions of the CONFIDENTIAL FUNDING GUIDE. A copy of the receipt attached to the request memo is to be maintained in the informant's main file. |

| (d) | Where payments are to be made to a Spanish speaking informant, Form FD-777, Spanish/English Receipt for Informant and Informant Payments, should be executed to ensure that the terms and the amount of the payment are fully understood by the recipient. |

| (11) | A gift may be made to an informant in lieu of a payment for services with the prior approval of the SAC, or in his/her

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 46

absence, the ASAC. In reviewing such requests, care must be taken to avoid the appearance of impropriety and to ensure that the gift is to be given for strictly operational reasons. Purchase of the gift must be charged to the file number of the informant being paid as a payment for services. Agents are not to accept gifts from informants. For restrictions on financial, business and other dealings with informants, refer to the Manual of Administrative Operations and Procedures, Part I, 1-14.1.

(12) If private individuals or representatives of private industries or insurance companies offer a reward to an informant as a result of information supplied by the informant, they should be provided the pertinent information furnished by the informant if he/she agrees. SAC approval is necessary before participating in such payments. If it is necessary for an Agent to be involved in the reward payment in order to protect the informant, the transaction must be fully documented and appropriate receipts obtained. These transactions must adhere to all informant payment requirements. FBIHQ should be advised of the details of all such transactions.

(13) Income tax considerations

(a) All informants who receive compensation from the FBI for their services must be advised that such compensation must be reported as income when filing Federal income tax forms or other appropriate tax forms. Complete details of any problems the informant has encountered with the taxing authorities should be promptly furnished to FBIHQ.

(b) Informants should set forth income received from the FBI on the Federal income tax return as income received from other sources for personal services. Internal Revenue Service (IRS) regulations exempt law enforcement agencies from filing IRS Form 1099 (Miscellaneous Income Statement) for payments made to an informant. However, FBIHQ will provide a statement of payments made to an informant, upon his/her request, to assist the informant in reporting his/her income to the IRS.

(14) Stipulations regarding payments made to witnesses

(a) In trials in which an informant or other individual was paid a sum of money, and is a prospective witness, FBIHQ will furnish receipts signed by the prospective witness when so ordered by the court. Original receipts and a set of reproduced copies will be transmitted to the field office in the district where the trial will take place. In order for FBIHQ to furnish these

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 47

materials, the appropriate field office must furnish FBIHQ the following information:

1. Correct full name.
2. All aliases, code names, and symbol numbers.

3. First date of contact by your office.

4. Tabulation of all payments, broken down as to services and expenses. Although tabulations are not furnished to the Department, they must reflect all amounts contained in the FMS.

5. Listing of any advances, refunds and outstanding balance of advances. (See (b).)

6. Date of last contact by your office. (See (b).)

7. Whether the individual has been contacted or opened by any other field office. (See (b).)

(b) Where the informant has previously been used as a witness and tabulation of payments was prepared, information for items 137-8(14)(a)5 through 7 need be given only from date of last trial in which the individual was used.

(c) Above information should be submitted by separate communication to the Accounting Section, Finance Division. Interdivisional correspondence should be addressed to FBIHQ with copies designated for interested offices.

(d) When an informant is to testify, the informant's financial condition is to be discussed with him/her to ensure that the informant has fulfilled his/her tax obligations as reasonably as possible. If the informant has received FBI payments for services, the informant is to be reminded that these payments are income. Any payments by other law enforcement agencies are to be fully addressed. Any information developed or known concerning potential tax problems is to be brought to the attention of the United States Attorney's Office.

(15) Receipt of unemployment compensation (See FCI Manual, Part I, 134-4.7(8)(a).)

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 48

(a) At times, informants may temporarily lose their jobs and become eligible for unemployment compensation. Where unemployment regulations require listing of all sources of income as a prerequisite for unemployment compensation, an informant who is being paid by the FBI must comply with state laws. Informants must be alerted to those local requirements which may impact on them.

(b) Where state requires notification of FBI payments to informants that would necessitate disclosure of identity of the informant, the field office should consider discontinuing payments during the period of unemployment compensation benefits in order to protect his/her identity.

EFFECTIVE: 12/20/93

137-9

ADMINISTRATION OF INFORMANTS

(1) Each informant must be assigned a code name which is unique to him/her within the field office. The code name or pseudonym is assigned to the informant as a measure of additional security and must be utilized in signing payment receipts. The code name is to be utilized in place of the informant's true name in the field office payment records. Care must be taken to ensure that the choice of the code name does not tend to identify the informant's true name, occupation, or information which is unique to the informant.

(2) Upon the opening of an informant, all relevant data is to be entered into the Criminal Informant Management System (CIMS) within two business days. All other administrative information pertaining to the informant should be entered into CIMS as soon as it becomes available. The Criminal Informant Program Manager is responsible for ensuring that the data is entered into CIMS and that it is done in a timely manner.

(3) Upon entry in CIMS of the information from the opening memorandum concerning the informant in the suitability and pertinence inquiry, FBIHQ will place a "Wanted-Flash-Cancellation Notice" in the Criminal Justice Information Services Division. When the "Wanted-Flash-Cancellation Notice" is placed, the field office will be advised by FBIHQ of any National Crime Information Center (NCIC) inquiry about the informant. In the event there is no record, the field office will not receive a reply from FBIHQ. When the informant is closed, FBIHQ will automatically cancel any "Wanted-

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 49

"Flash-Cancellation Notice" which may have been placed. (See MIOG, Part II, 14-12.3.4.)

(4) Informants are not to be advised of their symbol number. Where an informant furnishes information which necessitates a change in the category designation (i.e., OC, C, D, WC, etc.), the symbol number previously furnished will remain the same; however, the suffix must be changed to indicate the appropriate program designation. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or to fulfill other existing needs.

(5) After entering the permanent symbol number from the opening memorandum into CIMS, subsequent communications should contain the informant's symbol number, rather than his/her true name. The informant's symbol number and true name should not appear on any communications which are not secure. All communications concerning an informant's development and/or operation must be submitted by secure teletype.

(6) If an informant was either born or previously domiciled outside the United States, the case Agent should consider sending a secure teletype to the appropriate Legat requesting a background check of the source.

(7) If it is determined that an individual is not suitable for use as an informant, he/she is to be immediately closed by the submission of a memorandum to the field informant file and entry of the data it contains in CIMS, to include a statement setting forth the specific reason for closing the individual and whether the individual should be considered for future use by the FBI.

(8) Upon the closing of an informant, the case Agent must prepare a memorandum stating whether the source's identity was ever made public, i.e., whether he/she ever testified in court. The purpose of this memorandum is to prevent unnecessary or overbroad disclosure of information provided by the informant through a Freedom of Information Act request. In the event that the informant did testify, the case Agent should set forth the general nature and subject matter of the testimony in the memorandum.

(9) Where it is necessary for an informant to be utilized in a field office other than his/her OO, the field OO should furnish the new OO with full background information, including a summary of information previously provided by him/her, descriptive data, payment

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 50

records, mode of travel and any other information useful in the operation of the informant. Any information that reflects negatively upon the reliability of the informant is to be promptly furnished to the field office considering the use of his/her services. The new OO should ensure that the informant is closed in the original OO either prior to submitting an opening communication to FBIHQ or upon entering the information into CIMS.

(10) Whenever an individual is closed, regardless of his/her status, the field office must reinitiate an SI before they can again be operated as a fully operational informant. The opening communication should indicate that the individual is being reopened. The field office must use the same symbol number that was assigned in the previous SI when reopening an individual.

EFFECTIVE: 06/08/94

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INFORMANT COMMUNICATIONS (See MIOG, Part II,
10-10.5.1(2)(e); Correspondence Guide-Field, 2-11 &
3-19.)

(1) All correspondence relating to the development or operation of informants among field offices must be transmitted by secure teletype. The opening, conversion, closing, and extension of informants whose operation is not restricted by their occupation as in MIOG, Part I, 137-7.1 through 137-7.2, are to be documented by memoranda in the field office file. (See MIOG, Part I, 137-3.1.1(4), 137-3.1.1(5), & 137-3.1.2(2)). Any correspondence regarding additional payment authority, participation in extraordinary criminal activity, and unauthorized criminal activity are to be transmitted by secure teletype to FBIHQ. The only exceptions to this instruction are existing forms and FD-209s with accompanying inserts or FD-302s relating to investigative matters of interest to another field office. Surface mail and telephone conversations between field offices and resident agencies regarding informants should be strictly limited. All documents which either identify or tend to identify an informant or cooperative witness must be hand-carried by an Agent. All security concerns should be resolved in favor of hand-carrying sensitive information by an Agent.

(2) All correspondence among field offices and FBIHQ requesting payments to an informant, travel of an informant, or involving the operation of an informant, must be transmitted by secure

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 51

teletype under the informant's symbol number caption and not under a substantive case caption.

(3) All information pertinent to FBI investigative responsibilities furnished by an informant must be promptly reviewed, evaluated, channelized, entered into CIMS and all other necessary action taken.

(4) In criminal cases positive information must be recorded either on investigative inserts or FD-302s. Positive information must not be recorded on FD-209s.

(a) USE OF INSERTS - Information provided by an informant that will not become testimony should be recorded on an investigative insert. The insert will contain the informant's symbol number and the date the information was provided. The original insert will be filed in the informant's subfile and a copy will be routed to the pertinent substantive case file. Information received on two or more substantive investigative matters must be recorded on separate inserts and filed only in the pertinent substantive investigative file. All information furnished by the informant must be filed in the informant's subfile.

(b) USE OF FD-302s - If the informant's information is of evidentiary value and likely to become the subject of testimony, the information must be recorded on an FD-302 in the same manner as if the information were received from any other witness. Three copies of the FD-302 will be prepared. The original of the FD-302 must reveal the identity of the informant, but the identity must be concealed on all copies. Also, the informant's file number must not appear on the original FD-302 or any copy. Transcripts of conversations of the informant will be handled in the same manner as an FD-302. If information from the informant is so singular in nature or reported in a manner which would tend to identify the informant, a succinct summary of the pertinent information should be filed in the substantive file. The following is an example of how an original FD-302 and copy should be prepared.

- ORIGINAL FD-302 -

- EXAMPLE -

(To be filed in informant's main file)

JOHN J. DOE, 123 Main Street, New York, New York,
furnished the following information:

On March 12, 1984, he saw a green tractor trailer bearing

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 52

Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

Investigation on 3/15/84 At New York City File # Substantive File
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

- COPIES OF THE ABOVE FD-302 -

- EXAMPLE -

(To be filed in informant's subfile and in the substantive case file without the true name)

An informant, who has provided reliable information in the past, furnished the following information:

On March 12, 1984, he/she saw a green tractor trailer bearing Pennsylvania license plate XYZ 111, loaded with cases of cigarettes at a garage at 789 West 11th Street, New York, New York. The cases were from the ABC WAREHOUSE, Winston-Salem, North Carolina, and were addressed to BELL DRUGS, 45 Maple Street, Philadelphia, Pennsylvania.

Investigation on 3/15/84 At New York City File # Substantive File
By AGENT'S NAME:typist's initials Date Dictated 3/16/84

(c) FD-209 - An FD-209 will be prepared as a cover sheet for inserts which are filed in the informant's subfile. The FD-209s must not accompany inserts routed to the substantive case file. An FD-209 must also be prepared in triplicate for each FD-302. The FD-209 is used in serializing the FD-302 into the informant's main file (original FD-302 bearing the informant's true name), the informant's subfile (copy of FD-302 identifying the informant only as an informant) and the substantive case file (copy of FD-302

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 53

identifying the informant only as a Confidential Source). The FD-209 will be captioned with the informant's symbol number and bear the file number of the informant's file and the case caption of the substantive case. The following warning statement must appear on the FD-209: "Information contained herein was obtained confidentially. The informant's name is not to be disclosed in any form unless a conscious decision has been made to disclose his/her identity by an appropriate FBI official."

(d) The FD-209 will be used to document all negative contacts with an informant relating to his/her investigative activities as an informant. However, where the informant is contacted for the sole purpose of making payment for services and/or expenses, and they do not provide any information relating to investigative activities, there is no need to document the contact on an FD-209.

(5) Copies of FD-302s or inserts containing informant information which have been disseminated must not be filed in the dissemination control file. These FD-302s or inserts should be filed in the informant's subfile and the pertinent substantive file only. An FD-159 reflecting dissemination should be prepared. Copies should be placed in the informant's main file, and the field office dissemination control file.

(6) Informant information utilized in affidavits for Title III applications, search warrants, complaints, or any other court document must be reviewed by the field supervisor to ensure that the informant information in the document is contained in an insert or FD-302, in both the informant and substantive case files. On the file copy of the legal document in the substantive case file, the case Agent must note the substantive case file, serial number and page of the FD-302 or insert where the informant information can be found which was used in support of the legal document. This notation should be placed in the margins next to the informant's information in the legal document.

(7) Characterizations of informants utilized in affidavits or other legal documents described above should be updated at the filing of each legal document in which an informant's information is used. The serial number of the legal document containing the characterizations (from the substantive case file) must be documented in the informant's main file. This documentation is indexed to the FD-237 and is used in support of statistical accomplishments.

(8) All positive information obtained from an informant

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 54

operated by one field office and which pertains to investigative matters in another field office must be immediately transmitted to that field office. Appropriate copies of FD-209s with accompanying inserts or FD-302s containing that information are to be sent to that field office as enclosures to an airtel under the substantive case caption. Copies of these outgoing communications must be maintained in the informant's main file.

(a) Those FD-209s and accompanying inserts or FD-302s are to be sent to the personal attention of the SAC, or his/her designee, in a sealed envelope. In instances where an entire informant's file, or a substantial portion thereof, is required in another field office, the file should be hand-carried by an Agent.

(b) In a situation wherein an informant is being temporarily operated by an office other than his/her OO, original FD-302s in which the informant is identified will be hand-carried by an Agent in a sealed envelope to the SAC of the informant's OO for inclusion in the informant's file. Nothing in or on the envelope should identify the FD-302s as being connected to an informant matter. The sending office will, however, advise the OO by teletype under the source's symbol number that the FD-302s are being sent.

(c) Any transmission by facsimile of any true name FD-302 or other document which tends to identify the informant must be done by secure facsimile.

(9) All statistics obtained as a result of an informant's information should be claimed on an FD-209 and this FD-209, with nothing attached, should be placed in the informant's main file. The FD-209, containing the substantive case title, file number and statistic claimed, should be indexed to the FD-237.

(10) In instances where a criminal informant reports information pertinent to the FBI's foreign counterintelligence or international terrorism mission, a Subfile B is to be created to maintain that information. The Subfile B is to be appropriately classified. Subsequently, the information should be disseminated to the proper substantive FCI/IT file. (See 137-11 (4)(c).)

EFFECTIVE: 06/08/94

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 55

137-11 INFORMANT FILES AND INDICES (See MAOP, Part II, 2-5.1.)

(1) A separate and secure room is to be utilized for the maintenance of all informant and cooperative witness indices and pending informant and cooperative witness files. Where possible, all closed informant files should also be maintained in this room or otherwise maintained in a secure and locked condition. All pending and closed informant files are to be maintained under the personal authority of the SAC or a person designated by the SAC. Access to this room will be limited to necessary personnel and this space should be locked at all times when unattended. A log is to be maintained on persons requesting and reviewing informant files. Authority to review an informant's file should be restricted to the SAC, ASAC, the case Agent's supervisor, the Principal Legal Advisor, the case Agent, the alternate Agent, the co-case Agent, the Informant Coordinator, the CIMS Analyst and confidential file room clerk. The file will not leave the room, except for the express purpose of a file review by the supervisor or the handling Agent. Logs must have columns for "date," "file number," "signature of person reviewing file," and "time file charged out" and "in." Informant files should not be located outside this room after close of business hours.

(2) Individual files are to be maintained on all active informants and should be carried as pending. These files, as well as the closed informant files, should be bound in the green file cover and file back (designated as an FD-245a). These files are to be assigned to the Agent who is personally responsible for the development and operation of the informant.

(3) An FD-237 is to be used in the nature of a table of contents or index to indicate where particular data can be found in the file. The form should be carried as the top document in the informant's main file and should not be serialized. This form should be updated regularly as the required information changes.

(4) All informant files should be separated into two sections. Administrative and identifying data is to be maintained in the main file and all information, reports, etc., furnished by the informant should be maintained in the subfile.

(a) Main file items:

- Correspondence requesting approval to open
- 1A file items (photograph, fingerprint card, etc.).
- Indices checks (Local and FBIHQ).

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 56

- NCIC inquiry and response.
- Criminal Justice Information Services Division, Report.
 - Local arrest records.
 - Credit checks.
 - FD-302s in which the identity of the informant has been revealed.
 - Inserts in which the identity of the informant is revealed.
 - FD-209s used to claim statistical accomplishments.
 - FD-209s used as a cover page for above-mentioned FD-302s.
 - FD-209s containing administrative information that may tend to identify the informant.
 - Payment request memos.
 - Draft request forms.
 - Signed payment receipts.
 - Requests to FBIHQ for additional payment authority.
 - Requests to FBIHQ for lump-sum payment authority.
 - All other administrative-type correspondence.
 - Any correspondence that identifies or tends to identify the informant.
 - Documentation authorizing criminal activity.

(b) Subfile A items:

- FD-302s in which the identity of the informant is concealed.
- Inserts which conceal identity of the informant.
- FD-209s used as cover page for inserts.
- Negative contact FD-209s.

(c) Subfile B items:

- Classified FD-302s in which the identity of the informant is concealed.
- Classified inserts which conceal identity of the informant.
- Classified FD-209s used as cover page for inserts. (See 137-10(10).)

(5) Symbol number and code name.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 57

(a) Each informant should be assigned a permanent symbol number and code name unique to the field office. FBIHQ will be advised of the symbol number and the informant's code name through data entry in CIMS. The code name or pseudonym is assigned to the informant as a measure of additional security and is to be utilized in signing payment receipts. The code name is utilized in place of the informant's true name in the field payment ledger.

(b) The informant is not to be advised of his/her symbol number.

(c) The prefix of the symbol number should consist of the appropriate field office abbreviation. The suffix of the symbol number should identify the category of information which the informant is providing.

(d) Although the informant may subsequently furnish information requiring a change in designation, the number previously assigned will remain the same; however, the suffix should be changed to indicate the appropriate designation, i.e., C, OC, TE, WC, DT, D or CS. The utilization of the suffix in the reporting of information derived from the source is unnecessary although suffix utilization should be continued for administrative purposes or other need exists.

(e) After FBIHQ has been advised of the permanent symbol number through data entry in CIMS, and documented in the opening memorandum in the source file, subsequent communications should contain the informant's symbol number rather than the true name. The informant's symbol number and true name should not appear on any communications which are not secure. Any communications submitted to FBIHQ in connection with the operation or administration of the informant should be captioned under the assigned symbol number and not the substantive case caption.

(f) The use of symbol numbers should be restricted to informants and should not be used for any other investigative technique.

(6) Indexing

(a) The informant's true name, aliases and other identifying data are to be indexed into CIMS. A manual index is to be maintained in the confidential file room for those informants indexed prior to the establishment of CIMS.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 58

(b) No indexing to the general indices should be done from individual informant files. All such indexing should be done from substantive files.

(7) Indices

(a) All offices should maintain an alphabetical name index, a symbol number index, and a code name index for all informants not maintained in CIMS. These indices should be maintained as above in a separate and secure manner under the authority of the SAC or person designated by that official.

(b) SACs should ensure that all necessary searching of these separate indices is conducted.

(c) The result of a search of these indices, either positive or negative, should not be handled in a routine manner similar to a general indices review. Good judgment should be utilized consistent with security concerns. Notification of an informant reference should be coordinated with the appropriate supervisor having responsibility for the mail being searched.

(d) Other indices may be maintained in the confidential file room as deemed necessary by the office for convenience such as an index of informants in other divisions or an index broken down by activity or geographical area. Any such indices should be given the same security as the alphabetical, symbol number and code name indices.

(8) A Form FD-675 entitled, "Supervisor's 60-Day Informant File Review Log" is to be placed immediately underneath the FD-237 in the main informant file. It is to be used to document the Supervisor's review every 60 days as mandated by Bureau policy. It should not be serialized or destroyed. Place a new FD-675 on top of the old form if there is a need for additional certification space.

EFFECTIVE: 06/08/94

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 59

137-12 ON-SITE REVIEWS

(1) To enhance the administrative efficiency of the Criminal Informant Program (CIP) at FBIHQ and in the field offices, an on-site review will be conducted periodically of the CIP of each field office.

(2) The purpose of the on-site review is to afford the Criminal Informant Unit an opportunity to review the field CIP from an overall program perspective, by identifying areas which may need attention, and to provide CID with the results of the on-site findings. Each informant's reliability and the action taken when reliability is in question are to be considered during the on-site review. This on-site review should not only be concerned with the number of informants but also with the quality of information furnished, the priority of the investigative programs in which information is provided, and the degree of compliance with FBI and Attorney General policies and guidelines. An on-site review should enable the Criminal Informant Unit to determine whether the field CIP is capable of supporting the investigative programs of the field office, to ensure the worthiness of each informant for continued operation, and to confirm that all informants are being operated within established operational parameters.

(3) Prior to an on-site review, each field office should rate each informant utilizing the scale set forth below by individual investigative program based on information furnished and provide an aggregate overall evaluation for each informant. The evaluation should be based on both contributions consisting of statistical accomplishments and intelligence concerning investigative efforts.

EXCELLENT

Furnishes information of high quality on a continuing basis which usually could not be obtained through other means and which contributes significantly to the FBI's investigative and intelligence gathering efforts.

VERY GOOD

Regularly furnishes quality information which contributes measurably to the investigative and intelligence-gathering efforts of the Bureau.

GOOD

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 60

Furnishes sufficient worthwhile information to remain active and qualified as an informant.

FAIR

| Furnishes | some | information of value for an extended period.

POOR

Informants in this category have furnished no information of value and consideration should be given to closing them.

NEW

Too new to evaluate.

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| 137-13 | ATTORNEY GENERAL'S GUIDELINES ON THE USE OF
INFORMANTS

| (1) Attorney General guidelines on FBI use of informants and confidential sources are included below in these 137 guidelines.

| (2) These guidelines on the use of informants and Confidential Sources are set forth solely for the purpose of internal FBI guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the FBI. |

"ATTORNEY GENERAL'S GUIDELINES ON FBI USE OF
INFORMANTS AND CONFIDENTIAL SOURCES"

"A. Introduction

"(1) The courts have recognized that the government's use of informants and confidential sources is lawful and often essential to the effectiveness of properly authorized law enforcement investigations. However, use of informants and confidential sources to assist in the investigation of criminal activity may involve an

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 61

element of deception, intrusion into the privacy of individuals, or cooperation with persons whose reliability and motivation can be open to question. It is proper for the FBI to use informants and confidential sources in appropriate investigations, but special care must be taken to carefully evaluate and closely supervise their use, and to ensure that individual rights are not infringed and that the government itself does not become a violator of the law. Though informants and confidential sources are not employees of the FBI, their relationship to the FBI can impose a special responsibility upon the FBI when the informant or confidential source engages in activity where he has received, or reasonably thinks he has received, encouragement or direction for that activity from the FBI.

"(2) To implement these guidelines, the FBI shall issue detailed instructions to all Special Agents responsible for dealing with informants and confidential sources.

"B. Definition of Confidential Source, Informant, and Continuing Basis

"(1) A confidential source, under these guidelines, is any person or entity furnishing information to the FBI on a confidential basis, where such information has been obtained as a result of legitimate employment or access to records and is provided consistent with applicable law.

"(2) An informant, under these guidelines, is any other person or entity furnishing information to the FBI on a confidential basis.

"(3) An informant or confidential source used on a "continuing basis" is one providing information or substantial operational assistance with some degree of regularity. This may be as infrequent as a few times per year, or as frequent as several times per week.

"C. General Authority

"(1) An informant or confidential source may be asked to provide information already in his possession, to provide information which comes to his attention, or to affirmatively seek out information, concerning criminal conduct or other subjects of authorized investigative activity. An informant or confidential source may also be asked to provide operational assistance to the FBI, including furnishing resources or facilities.

"(2) The FBI may only use informants or confidential sources in furtherance of its authorized investigative activities and law

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 62

enforcement responsibilities. Informants and confidential sources may not be used or encouraged to commit acts which the FBI could not authorize for its Special Agents.

"D. Required Findings of Suitability and Pertinence
For Any Informant or Confidential Source Used on
a Continuing Basis, Any Informant Authorized to
Associate in Activities, Participation in Which
Otherwise Would be Criminal, and Any Informant
or Confidential Source Providing Substantial Operational
Assistance in an Undercover Operation

"(1) No informant or confidential source may be used to provide information on a continuing basis, no informant may be authorized to associate in activities, participation in which otherwise would be criminal, nor may any informant or confidential source be used to provide substantial operational assistance in an undercover operation, unless the supervisory FBI official designated below has made written findings:

"(a) that the informant or confidential source appears suitable for such use, and

"(b) that the information likely to be obtained or the operational assistance to be provided is pertinent to authorized FBI investigative activity or law enforcement responsibilities.

"Findings of suitability and pertinence shall be made by a supervisory agent designated by the Director except that in the case of a Domestic Security Investigation, the findings shall be made by a Headquarters official designated by the Director.

"(2) A finding of suitability should be preceded by a preliminary inquiry concerning the proposed informant or confidential source. A preliminary inquiry may only be used to assess suitability. It may not be used to develop information concerning an individual for the purpose of inducing him to become an informant or confidential source. A preliminary inquiry can use any lawful investigative technique except mail covers, access to tax information, any technique requiring probable cause, such as mail openings, nonconsensual electronic surveillance, or searches.

"(3) In determining the suitability of an informant or confidential source, the FBI shall weigh and consider the following factors:

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 63

"(a) the nature of the matter under investigation and the importance of the information or assistance being furnished;

"(b) the seriousness of past and contemporaneous criminal activity of which the informant or confidential source may be suspected;

"(c) the motivation of the informant or confidential source, including any consideration sought from the government for his cooperation;

"(d) the likelihood that the information or assistance which an informant or confidential source could provide is not available in a timely and effective manner by less intrusive means;

"(e) the informant's or confidential source's reliability and truthfulness, or the availability of means to verify information which he provides;

"(f) any record of conformance by the informant or confidential source to Bureau instructions and control in past operations; how closely the Bureau will be able to monitor and control the informant's or confidential source's activities insofar as he is acting on behalf of the Bureau;

"(g) the risk that use of informants or confidential sources in the particular investigation may intrude upon privileged communications, or inhibit the lawful association of individuals or expression of ideas; and

"(h) any risk that use of informants or confidential sources may compromise an investigation or subsequent prosecution, including court-ordered disclosures of identity which may require the government to move for dismissal of the criminal case.

"(4) A preliminary inquiry and written determination regarding suitability and pertinence should be completed within 120 days from the date the inquiry began. FBI Headquarters may authorize one or more extensions beyond 120 days, stating in writing the facts and circumstances precluding an earlier determination.

"(5) Determinations of suitability and pertinence shall be reviewed at least every 90 days by a field supervisor and at least annually by FBI Headquarters.

"(6) If it is determined not to use a person or entity as an

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 64

informant or confidential source, any information collected about the person or entity during the preliminary inquiry without the consent of the person or entity shall be promptly destroyed, unless it is or may become pertinent to authorized investigative activity or the person is a potential witness in a criminal prosecution. Any decision not to destroy all information about the person or entity shall be recorded with explanatory facts and circumstances in an investigative case file and shall be reviewed periodically by the SAC or designated field supervisor.

"(7) At any time the FBI learns an approved informant or confidential source is no longer suitable to provide information or operational assistance, his relationship with the Bureau shall be promptly terminated. FBI Headquarters shall maintain records of informant and confidential source terminations, including a detailed statement of the reasons for each termination. These records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources.

"E. Required Instructions to

"(1) Any Informant used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, Any Informant or Confidential Source Suspected of Substantial Involvement in Unauthorized Past or Continuing Criminal Activities, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation:

"Each such person shall be advised that his relationship with the FBI will not protect him from arrest or prosecution for any violation of Federal, State, or local law, except where the FBI has determined pursuant to these guidelines that his association in specific activity, which otherwise would be criminal, is justified for law enforcement; and that in carrying out his assignments he shall under no circumstances participate in any act of violence, initiate or instigate a plan to commit criminal acts, or use unlawful techniques to obtain information (e.g., illegal wiretapping, illegal mail openings, breaking and entering, or criminal trespass). Such persons shall be readvised when necessary, at least annually, and at any time there is reason to suspect they are engaged in serious criminal activity.

"(2) Other Confidential Sources Used on a Continuing Basis:

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 65

"In the place of the instructions in paragraph E(1) above, each such confidential source shall be advised that he is not acting as an agent or employee of the FBI, that he should use only lawful techniques to obtain information, and that he should provide information only in accordance with applicable law.

"(3) When the FBI learns that persons under investigation intend to commit a violent crime, any informants or confidential sources used in connection with the investigation shall be instructed to try, to the extent practicable, to discourage the violence.

"(4) A written record shall be made in each informant or confidential source file of the instructions noted above promptly after they are given.

"F. Authorized Participation by Any Informant in Criminal Activities

"An informant or confidential source shall not be authorized to engage, except in accordance with this paragraph, in any activity that would constitute a crime under state or federal law if engaged in by a private person acting without the authorization or approval of an appropriate government official. For purposes of this paragraph, such activity is referred to as 'otherwise criminal' activity.

"(1) A determination that participation by an informant in otherwise criminal activities is justified shall be made only by the supervisory FBI official designated in paragraphs F(2) and '(3) below on the basis of his written finding that

"(a) the conduct is necessary to obtain information or evidence for paramount prosecutive purposes, to establish and maintain credibility or cover with persons associated with criminal activity under investigation, or to prevent or avoid the danger of death or serious bodily injury;

"(b) this need outweighs the seriousness of the conduct involved.

"(2) For purposes of these Guidelines there are two types of otherwise criminal activities -- 'extraordinary,' i.e., those involving a significant risk of violence, corrupt actions by high public officials, or severe financial loss to a victim, and 'ordinary.' A determination that participation in activities which, otherwise would be 'ordinary' criminal activities is justified as part of an informant's assignment shall be made by a field office supervisor or higher level official, and shall be recorded in writing

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 66

in advance of any such activity, except that oral approval may be given in an emergency situation where confirmed thereafter in writing as soon as possible. The SAC shall review all such criminal activity by informants at least every 90 days.

"Determinations authorizing participation in such activities may concern a single instance of otherwise criminal activity or a specified group of otherwise criminal activities.

"The written determinations shall be submitted annually to Headquarters for review, and shall be subject to review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants.

"(3) A determination that participation in activities which otherwise would be 'extraordinary' criminal activities -- is justified as part of an informant's assignment shall be made only by the SAC and only after the SAC consults with and obtains the approval of the United States Attorney. The consultation shall be in a form suitable to protect the identity of the informant. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to a senior Headquarters official designated by the Director, and to the Assistant Attorney General in charge of the Criminal Division or his designee, in a form suitable to protect the identity of the informant.

"If the SAC reasonably determines that an emergency situation exists requiring informant participation in activities which otherwise would be extraordinary criminal activities before approval by the United States Attorney can with due diligence be obtained, in order to protect life or substantial property, to apprehend or identify a fleeing offender, or to prevent the imminent loss of essential evidence, the SAC may approve the participation on his own authority but shall immediately notify the United States Attorney, the appropriate senior Headquarters official, and the Assistant Attorney General in charge of the Criminal Division or his designee. In such an emergency situation the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's office before approving participation.

"(4) Upon approving any participation in otherwise criminal activity, the FBI shall repeat to the informant the instruction specified in paragraph E(1).

"The FBI shall also seek, to the extent practicable, to provide:

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 67

"(a) that the adverse effect of the activity on innocent individuals is minimized;

"(b) that the informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he will participate;

"(c) that the informant's participation in the activity is closely supervised by the FBI; and

"(d) that the informant does not directly profit from his participation in the activity.

"(5) Any proposal by a confidential source to engage in otherwise criminal activities in order to gather information changes the status of that individual from confidential source to informant.

"G. Notifying Appropriate Authorities of Unauthorized Criminal Activity by Any Informant or Confidential Source

"(1) While carrying out an FBI assignment, an informant or confidential source bears a relationship to the FBI such that his participation in any unauthorized activity in connection with the assignment associated with criminal activities, even of a minor character, should be carefully scrutinized and severely regarded. Hence, whenever a Special Agent learns that an informant or confidential source has participated in a criminal activity in connection with an FBI assignment which was not authorized pursuant to the procedures of paragraph F of these guidelines, the Special Agent shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In exceptional circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall promptly notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, what use will be made of any information gathered through the violation of law, and whether continued use will be made of the

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 68

informant or confidential source.

"(2) Informants who are in a position to have useful knowledge of criminal activities often are themselves involved in a criminal livelihood. It is recognized that in the course of using an informant or confidential source, the FBI may receive limited information concerning a variety of criminal activities by the informant or confidential source, and that in regard to less serious participation in criminal activities unconnected to an FBI assignment, it may be necessary to forego any further investigative or enforcement action in order to retain the source of information. However, whenever a Special Agent learns of the commission of a serious crime by an informant or confidential source, he shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall immediately notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, and what use will be made of any information gathered through the violation of law. A determination to then continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division or his designee.

"(3) Each FBI field office shall immediately notify FBI Headquarters whenever it learns of participation by an informant or a confidential source in a serious act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. Detailed records shall be maintained at Headquarters regarding each instance of informant or confidential source participation in a serious act of violence, and these records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources. A determination to continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 69

"(4) In determining whether to notify appropriate state or local law enforcement or prosecutive authorities of criminal activity by FBI informants and confidential sources, the FBI shall consider:

"(a) whether the crime is completed, imminent or inchoate;

"(b) the seriousness of the crime in terms of danger to life and property;

"(c) whether the crime is a violation of federal or state law, and whether a felony, misdemeanor, or lesser offense;

"(d) the degree of certainty of the information regarding the criminal activity;

"(e) whether the appropriate authorities already know of the criminal activity and the informant's or confidential source's identity;

"(f) the effect of notification on FBI investigative activity.

"(5) Under no circumstances shall the FBI take any action to conceal a crime by one of its informants or confidential sources.

"H. Informants and Confidential Sources Under the Obligation of a Legal Privilege of Confidentiality or Affiliated with the News Media

"(1) A person who is under the obligation of a legal privilege of confidentiality or who is affiliated with the news media may be used as an informant or as a confidential source only after express approval in writing by the Director or a designated senior Headquarters official, except that a field office supervisor may approve one-time receipt of information not collected at the request of the FBI where the particular information is unprivileged.

"The FBI shall promptly give written notice, or oral notice confirmed in writing, to the Assistant Attorney General in charge of the Criminal Division or his designee of any such Headquarters authorization. The notice shall include sufficient information to allow meaningful review, and shall set forth the reasons why the individual should be used as an informant or confidential source.

"(2) Any such person approved as an informant or confidential source shall be advised by the FBI that in seeking information from

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 70

him, the FBI is not requesting and does not advocate breach of any legal obligation of confidentiality. A record shall be made and kept in the informant or confidential source file when the advice has been given. This advice shall be provided before accepting information on a continuing basis.

"(3) If, despite the advice to the informant or confidential source that revelation of privileged information is not requested or advocated, he offers to provide information that is privileged or arguably privileged, the offer shall not be accepted unless a field office supervisor determines that serious consequences would ensue from rejection of the offer, such as physical injury to an individual or severe property damage. A report concerning such information and the circumstances that warranted its acceptance shall be promptly forwarded to FBI Headquarters.

"If the information is spontaneously provided by the informant or confidential source, without any offer that would alert the Special Agent to the nature of the information, in circumstances which do not meet the standard serious consequences, the information may be recorded in suitable form for the purpose of establishing that the problem was recognized and that no use was made of the information in the conduct of any investigation.

"(4) Regardless of state law, the procedures of this section must be followed for any licensed physician, any person admitted to practice law in a court of a state, any practicing clergyman, and any member of the news media.

"I. Infiltration of Organization Activities by Informants
or Confidential Sources Used on a Continuing Basis

"(1) The lawful activities of legitimate organizations are, of course, not subject to investigation. However, individual members of such organizations may be independently involved in criminal activities. In order to assure that the privacy of constitutionally-protected activities will be respected, the FBI should carefully regulate use of informants and confidential sources who will make use of affiliations with legitimate organizations in order to gather information concerning the activities of individual members.

"In particular, when, to obtain information,

"(a) an informant or confidential source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or confidential source's

Sensitive

Manual of Investigative Operations and Guidelines
Part I.

PAGE 137 - 71

formal affiliation will give him continued access to nonpublic information related to the legitimate purposes of the organization; or

"(b) an informant or confidential source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities,

the determination to use the person as an informant or confidential source on a continuing basis shall be made by the ASAC or SAC.

"(2) In determining whether the use of such an affiliated person as an informant or confidential source on a continuing basis is appropriate, the ASAC or SAC should consider:

"(a) the likelihood of responsible behavior by the informant or confidential source during the course of his organizational membership;

"(b) the ability of the FBI to focus the informant's or confidential source's reporting on members of the organization involved in criminal activities and to minimize adverse impact on innocent members of the organization; and

"(c) whether the use of the informant or confidential source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

"(3) In approving the use of such an affiliated person as an informant or confidential source on a continuing basis, the ASAC or SAC shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"(4) Nothing in this paragraph limits the authority of the FBI to conduct otherwise proper investigations of illegitimate organizations or organizations engaged in unlawful activities. See the Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations, and on Domestic Security Investigations." |(See MIOG, Introduction, Section 1-3 for updated AG Guidelines.)|

"J. Minimization in Domestic Security Investigations

"In approving use of an informant or confidential source to

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 72

infiltrate a group under investigation as part of a Domestic Security Investigation, or in recruiting a person from within such a group as an informant or confidential source, an FBI Headquarters official shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

"K. Persons Represented by Counsel

"Whenever an individual is known to be represented by counsel in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically an

applicable law and Department procedure.

"L. Coordination with United States Attorneys and Other Federal Prosecutors.

"In any matter presented to a United States Attorney or other federal prosecutor for legal action (including prosecution, grand jury investigation, application for a search warrant, or application for a wiretap), where the matter has involved the use of an informant or a confidential source in any way or degree, the FBI shall take the initiative to provide full disclosure to the federal prosecutor concerning the nature and scope of the informant's or confidential source's participation in the matter.

"If the FBI deems it necessary to withhold certain information to protect the informant's or confidential source's identity from possible compromise, it shall inform the prosecutor of the general nature of the information that is being withheld.

"M. Compensation for Informants and Confidential Sources

"(1) The FBI may pay informants and confidential sources a reasonable amount of money or provide other lawful consideration for information furnished, services rendered, or expenses incurred in authorized investigative activity. No payment of money or other consideration, other than a published reward, shall be conditioned on the conviction of any particular individual.

"(2) In investigations involving serious crimes or the expenditure of extensive investigative resources, the FBI may

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 73

compensate informants or confidential sources with an extraordinary payment in excess of \$25,000. The Attorney General shall be informed of any such extraordinary payment as he deems necessary.

"(3) Where practicable, compensation agreements with informants or confidential sources in connection with a significant FBI undercover operation shall provide that compensation will depend on compliance with the obligation of confidentiality for investigative information, and shall further provide that any profits derived from a violation of the obligation shall be forfeited to the United States.

"N. Reservation

"These guidelines on the use of informants and confidential sources are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the Department of Justice."

EFFECTIVE: 12/20/93

| 137-14 | REVISED AND MOVED -- SEE 137-4 (16) THROUGH (19) |

EFFECTIVE: 12/20/93

| 137-15 | DELETED |

EFFECTIVE: 12/20/93

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 137 - 74

| 137-16 | REVISED AND MOVED -- SEE 137-13 |

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Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 138 - 1

SECTION 138. | BACKGROUND INVESTIGATION - INTERNATIONAL
ORGANIZATIONS

138-1 | BACKGROUND INVESTIGATION - INTERNATIONAL ORGANIZATIONS

This classification, formerly entitled "Loyalty of Employees of the United Nations and Other Public International Organizations (LEUN)," was deleted in Fiscal Year 1990 in view of the fact the FBI no longer conducts these investigations. Previously, investigations in this classification stemmed from referrals from the Office of Personnel Management when questions or allegations were received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422. The FBI first opened this classification in 1953 to investigate the loyalty to the U.S. of U.S. employees of the United Nations and other international organizations.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 1

SECTION 139. INTERCEPTION OF COMMUNICATIONS

139-1

STATUTES

Title 18, USC, Sections 2510, 2511, 2512, 2513 (Public Law 90-351, Omnibus Crime Control and Safe Streets Act of 1968, as amended by Public Law 99-508, the Electronic Communications Privacy Act of 1986); Title 47, USC, Section 605 (Communications Act of 1934, as amended); Title 47, USC, Section 501, (Penalties for violation Title 47, USC, Section 605).

EFFECTIVE: 11/23/87

139-1.1 Title 18, USC, Section 2510 - Definitions (See MIOG, Part I, 264-2.4.)

(1) WIRE COMMUNICATION - Any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of interstate or foreign communications or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication;

[See MIOG, Part II, 10-10.11.2 noting that radio communications transmitted over cordless telephones are included within the definition of "wire communication" and are therefore protected by Title III.]

(2) ORAL COMMUNICATION - Any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, but such term does not include any electronic communication;

(3) ELECTRONIC COMMUNICATION - Any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio electromagnetic, photoelectronic or photooptical system that affects interstate or

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 2

foreign commerce. "Electronic communication" is also specifically defined to exclude a wire or oral communication. Any and all forms of electronic communications, unless specifically exempted, are subject to the provisions of the statute.

For additional definitions refer to Chapter 119 of Title 18, USC.

EFFECTIVE: 06/03/96

139-1.2 Title 18, USC, Section 2511 - Interception and Disclosure of Wire, Oral, or Electronic Communications Prohibited

This section prohibits the interception and disclosure of wire, oral or electronic communications except as otherwise specifically addressed in Chapter 119 of Title 18, USC. Any person is in violation if that person-

(1) intentionally intercepts, endeavors to intercept or procures any other person to intercept or endeavor to intercept, any wire, oral or electronic communication;

(2) intentionally uses, endeavors to use or procures any other person to use or endeavor to use any electronic, mechanical or other device to intercept any oral communication, in circumstances detailed under this Section of Title 18, USC;

(3) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection; or

(4) intentionally uses or endeavors to use, the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this subsection.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 3

139-1.2.1 Exceptions

(1) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire, oral or electronic communication, to intercept, disclose or use that communication in the normal course of his/her employment while engaged in any activity which is a necessary incident to the rendition of his/her service or to the protection of the rights or property of the provider of that service, except that a provider of wire or electronic communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks. Refer to Section 2511 for specific exemptions;

(2) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his/her employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of Chapter 5, Title 47, USC, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained;

(3) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception;

(4) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any state;

(5) It shall not be unlawful under this chapter or Chapter 121 of Title 18, USC, for any person-

(a) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 4

(b) to intercept any radio communication which is transmitted-

1. by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

2. by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

3. by a station operating on an authorized frequency within the bands allocated to the amateur, citizen band, or general mobile radio service; or

4. by any marine or aeronautical communications system;

(c) to engage in any conduct which-

1. is prohibited by Section 633 of the Communications Act of 1934; or

2. is excepted from the application of Section 705(a) of the Communications Act of 1934 by Section 705(b) of that Act;

(d) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(e) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted;

(6) It shall not be unlawful under this chapter-

(a) to use a pen register or a trap and trace device (as those terms are defined for the purposes of Chapter 206 of Title 18, relating to pen registers and trap and trace devices); or

(b) for a provider of electronic communication

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 5

service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service;

(7) A person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

(8) A person or entity providing electronic communication service to the public may divulge the contents of such communication-

(a) as otherwise authorized in Title 18, USC, Section 2511 (2)(a) or Section 2517;

(b) with the lawful consent of the originator or any addressee or intended recipient of such communication;

(c) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(d) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

EFFECTIVE: 11/23/87

139-1.3 Title 18, USC, Section 2512 - Manufacture, Distribution, Possession, and Advertising of Wire, Oral or Electronic Communication Intercepting Devices Prohibited

Except as otherwise specifically provided in Chapter 119 of Title 18, USC, this section prohibits any person from intentionally-

(1) sending through the mail or sending or carrying in interstate or foreign commerce, any electronic, mechanical or other device, knowing or having reason to know that the design of such

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 6

device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications;

(2) manufacturing, assembling, possessing or selling any electronic, mechanical or other device, knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications and that such device or any component thereof has been or will be sent through the mail or transported in interstate or foreign commerce; or

(3) placing in any newspaper, magazine, handbill or other publication any advertisement of-

(a) any electronic, mechanical or other device knowing or having reason to know that the design of such device renders it primarily useful for the purpose of the surreptitious interception of wire, oral or electronic communications; or

(b) any other electronic, mechanical or other device, where such advertisement promotes the use of such device for the purpose of the surreptitious interception of wire, oral or electronic communications, knowing or having reason to know that such advertisement will be sent through the mail or transported in interstate or foreign commerce.

EFFECTIVE: 11/23/87

139-1.3.1 Exceptions

It shall not be unlawful for-

(1) a provider of wire or electronic communication service or an officer, agent, or employee of, or a person under contract with, such a provider, in the normal course of the business of providing that wire or electronic communication; or

(2) an officer, agent, or employee of, or a person under contract with, the United States, a state or a political subdivision thereof, in the normal course of the activities of the United States, a state, or a political subdivision thereof, to send through the mail, send or carry in interstate or foreign commerce, or manufacture, assemble, possess, or sell any electronic, mechanical, or other device knowing or having reason to know that the design of such device

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 7

renders it primarily useful for the purpose of the surreptitious
interception of wire, oral or electronic communications.

EFFECTIVE: 11/23/87

139-1.4 Title 18, USC, Section 2513 - Confiscation of Wire, Oral
or Electronic Communication Intercepting Devices

(1) This section provides that any electronic, mechanical
or other device used, sent, carried, manufactured, assembled,
possessed, sold or advertised in violation of Title 18, USC, Sections
2511 or 2512 may be seized and forfeited to the United States.

(2) The FBI has been delegated authority to institute
civil forfeiture proceedings pursuant to Section 2513. The Forfeiture
and Abandoned Property manual contains the step-by-step procedure to
be followed for seizures and civil forfeiture proceedings (judicial
and administrative) conducted in conjunction with this violation.

EFFECTIVE: 11/23/87

139-1.5 Title 47, USC, Section 605 - Unauthorized Publication or
use of Communications

Except as authorized by Chapter 119, Title 18, USC, no
person receiving, assisting in receiving, transmitting, or assisting
in transmitting any interstate or foreign communication by wire or
radio shall divulge or publish the existence, contents, substance,
purport, effect or meaning thereof, except through authorized channels
of transmission or reception-

(1) To any person other than the addressee, his/her
agent, or attorney;

(2) To a person employed or authorized to forward such
communication to its destination;

(3) To proper accounting or distributing officers of the
various communicating centers over which the communication may be
passed;

(4) To the master of a ship under whom that person is

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 8

serving;

(5) In response to a subpoena issued by a court of competent jurisdiction; or

(6) On demand of other lawful authority.

No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his/her own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his/her own benefit or for the benefit of another not entitled thereto.

EFFECTIVE: 11/23/87

139-1.5.1 Exceptions

(1) This section shall not apply to the receiving, divulging, publishing or utilizing the contents of any radio communication which is transmitted by any station for the use of the general public, which relates to ships in distress or which is transmitted by an amateur radio station operator or by a citizens band radio operator;

(2) This section shall not apply to the interception or receipt by any individual or the assisting of such interception or receipt, of any satellite cable programming for private viewing if-

(a) the programming involved is not encrypted;

(b) a marketing system is established and the individuals receiving such programming have obtained authorization for private viewing under that system.

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 9

EFFECTIVE: 11/23/87

139-2

POLICY

(1) Upon receipt of reliable information concerning an interception of communications violation falling within the 139A or 139B classification, the appropriate United States Attorney (USA) should be notified. The USA may request a preliminary investigation be conducted. Such should consist of interviews of complainants, victims and up to three witnesses, along with contact with the telephone company, when appropriate. Unless circumstances indicate otherwise, investigations should also include interviews of subjects. USA will review results and advise on merits of the case. USA is authorized by DOJ to request full-field investigation and initiate prosecution and forfeiture.

(2) | There are a few narrow exceptions to the general rule that the contents of illegally intercepted communications must not be disclosed. Before ANY disclosure or use is made of an unlawfully intercepted communication, the Chief Division Counsel should be consulted, and the concurrence of the appropriate United States Attorney's office obtained and documented. Permissible disclosure and use of illegally intercepted information varies depending on caselaw controlling in the particular judicial district. See Title 18, USC, Section 2517. |

| (3) | Allegations involving federal, state or local public officials as subjects or victims are classified as priority matters. Such matters require prompt and thorough investigation. Evidence should be collected in a timely and effective manner. The same applies to matters where it is alleged that a federal, state or local government agency is the victim. All other allegations concerning an interception of communications violation, not otherwise described in || (4) | below, are classified as nonpriority. A declination policy should be established with the appropriate USA for nonpriority matters, to include response to such allegations involving domestic marital disputes.

| (4) | Upon receipt of reliable information concerning an interception of communications violation falling within the 139C or 139D classification (Signal Theft), an initial effort should be made to assess the scope of the activity. Investigations should be limited to persons or companies which manufacture equipment or modify existing commercially available equipment to facilitate the theft of

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 10

communication signals by others. Resources should not be expended in the investigation of end users. These matters should be presented early for an initial prosecutive opinion and thereafter closely followed with the USA.

| (5) | Allegations involving the interception of cable, satellite or electronic communications for significant commercial gain are classified as priority matters. Significant commercial gain is defined as the manufacture, sale or advertisement to sell any device the design of which renders it primarily useful for the surreptitious interception of protected or encrypted communications, wherein the revenue accruing to the subject exceeds \$25,000. All other allegations involving interception of communication/signal theft matters are classified as nonpriority and should be covered in a declination policy with the USA.

| (6) | Significant allegations involving the theft of industrial or corporate proprietary information obtained as a result of the illegal interception of business electronic communications should be classified as Fraud By Wire (196 classification) or ITSP matters (87D classification) in lieu of handling under the IOC classification whenever applicable.

| (7) | [REDACTED]

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| (8) | Agents who may be required to testify in wiretapping prosecutions should confer with the prosecuting attorney in order to formulate a plan for direct examination which would confine cross-examination and in order to be prepared with the appropriate objections to the exploitation of matters on cross-examination which are not relevant and are objectionable under the rules of evidence.

| (9) | Attorney General Order No. 919-80, dated 12/18/80, sets forth procedures to be followed by officers and other employees

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 11

of the Department when served with a subpoena or otherwise ordered to produce or disclose material or information contained in DOJ files or official information in the possession of its employees. Should Agents who are witnesses be compelled by the court, over objection, to give testimony concerning their training and experience, which testimony might reveal material and information within their official possession or contained in DOJ files with respect to confidential investigative techniques, provisions of Attorney General Order No. 919-80 should be invoked. If appropriate, the government's prosecuting attorney should advise the court that the Attorney General has prohibited disclosure of such information in other types of cases because revelation thereof would be inimical to national security and defense of the United States. FBIHQ must be kept promptly advised of all developments in each case where this problem might present itself. (See MIOG, Part II, 6-1.)

| (10) | If complaint is based solely upon "beeps" or other unusual noises upon a telephone line, no investigation should be conducted in absence of other information indicating existence of an unauthorized wiretap and FBIHQ need not be notified of receipt of complaint, unless some unusual circumstances exist that would make it desirable to notify FBIHQ.

| (11) | No violation exists where one party permits a third party to listen to a telephone conversation without the second party's consent unless done for wrongful purpose (commission of crime or tort).

| (12) | Surreptitious listening on a party line telephone and/or later divulgence of information obtained may be a violation and should be discussed with USA in same manner as complaints of other possible interception of communications violations.

| (13) | Generally recording telephone conversations by one party without the knowledge of another party is not a violation of this chapter.

EFFECTIVE: 06/03/96

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 12

139-3 INVESTIGATIVE PROCEDURE

(1) Check identification records and Bureau files to determine if subjects have prior convictions under the Interception of Communication statutes set forth in this section. USA should be advised of the subjects' prior interception of communication convictions.

(2) In cases where full-field investigations are initiated-

(a) Evidence must be obtained to prove there was an unauthorized interception, use or disclosure of a communication.

(b) In 139A and B matters both parties to the intercepted conversation must be contacted to ensure that neither consented. On 139C and D matters, Agents should ensure that investigation establishes the requisite knowledge and intent on the part of the subject to violate the statute. This primarily applies to retailers and advertisers.

(c) Consider use of physical surveillances to identify subjects.

(d) Obtain photographs of installation and evidence of equipment used for submission to the Electronic Surveillance Technology Section, Signal Analysis and Processing Unit, Information Resources Division. Normally, devices need not be sent to the [REDACTED] for examination until full field investigation requested by USA. The same evidence handling and shipping procedures should be followed as in submitting evidence to the FBI Laboratory (See Part II, Section 13-6.7 of this manual).

(e) [REDACTED]

(f) [REDACTED]

(g) Handle search and seizures pursuant to Title 18, USC, Section 2513 in close cooperation and consultation with the USA. (See 139-1.4.)

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 13

EFFECTIVE: 11/24/97

139-4 MISCELLANEOUS

(1) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his/her official duty to conduct electronic surveillance as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(2) Nothing contained in this chapter or Chapter 121, or Section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in Section 101 of such act, and the interception of domestic wire and oral communications may be conducted.

EFFECTIVE: 11/23/87

139-5 VENUE

Wherever an offense is committed, begun or completed.

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 14

139-6 REPORTING PROCEDURES

(1) Advise FBIHQ, by appropriate teletype, the same day, when opening priority cases involving public officials and/or Federal, state or local government agencies. In such matters, an LHM (original and three copies) must be sent to FBIHQ within ten working days of the opening of the case. This communication should include facts predicated on the case, USA's opinion and initial investigative steps contemplated. Additional status communications are at the discretion of the SAC or at the request of FBIHQ. A closing LHM must be prepared for all investigations involving public officials and/or government agencies. This final LHM must restate the predication for opening the investigation, summarize investigative findings and detail the disposition of the investigation. The USA's opinion will be included where that office declines prosecution. Any prosecutive action should be detailed from indictment, information or complaint, through plea acceptance, trial disposition, and/or sentencing, as appropriate.

(2) Upon receipt of complaints alleging violations, not involving public officials and/or government agencies, FBIHQ should be promptly notified by airtel, or by more expeditious means if good judgment so dictates, based on the specific circumstances. Questionable status should contain recommendations of SAC as to action desired. If no investigative action is requested by the USA, the initial airtel should indicate that the investigation has been closed. Confirm USA's opinion by letter. If investigation is requested, investigative results should be furnished to FBIHQ for dissemination to DOJ, Criminal Division, by LHM and/or prosecutive summary report. The original and three copies of an LHM should be forwarded. If prosecutive summary report deemed advisable, two copies should be forwarded to FBIHQ.

EFFECTIVE: 11/23/87

139-7 PENALTY - MAXIMUM

(1) Title 18, USC, Section 2511 - fine or five years' imprisonment or both. In addition to criminal penalties, civil penalties may be applied. See Title 18, USC, Section 2511 for specific circumstance where criminal and civil penalties apply.

(2) Title 18, USC, Section 2512 - fine up to \$10,000 or imprisonment up to five years or both.

Sensitive
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Manual of Investigative Operations and Guidelines
Part I

PAGE 139 - 15

(3) Title 47, USC, Section 605 - for first offense, fine up to \$25,000 or imprisonment up to 1 year or both. For subsequent offenses, fine up to \$50,000 or imprisonment up to 2 years or both.

In accordance with the above sections, there is a sliding scale of penalties in conjunction with the nature of the offense and contingent upon other contributing factors. The above code sections should be referred to for specific penalty considerations.

EFFECTIVE: 11/23/87

139-8 COMPUTATION OF POTENTIAL ECONOMIC LOSS PREVENTED (PELP)
VALUES IN SIGNAL THEFT MATTERS

b2 [REDACTED]

EFFECTIVE: 08/27/90

139-9 CHARACTER - INTERCEPTION OF COMMUNICATIONS

EFFECTIVE: 08/27/90

139-10 SUBCLASSIFICATIONS

See MAOP, Part II, 3-1.1, "FBI Classifications and Subdivided Classifications."

EFFECTIVE: 10/18/95

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Manual of Investigative Operations and Guidelines
Part I

PAGE 140 - 1

SECTION 140. | OFFICE OF PERSONNEL MANAGEMENT - REFERRAL;
EMPLOYEES; - OTHER |

140-1

GENERAL INSTRUCTIONS REGARDING GOVERNMENT EMPLOYEE
SECURITY REFERRAL INVESTIGATIONS (140A AND 140C) | (See
MIOG, Part I, 46-1.11(3).) |

These instructions supplement those contained in Part II,
Section 17 of this manual.

(1) The first group of investigations in this category stems from referrals from OPM or other Government agencies wherein a question or allegation has been received regarding the applicant's or employee's loyalty to the Government as described in Section 8(d) of EO 10450. Referrals from OPM (handled under the 151 classification until Fiscal Year 1990) originate at (a) Peace Corps (ACTION-OPM), (b) Department of Energy (DOE-OPM), (c) National Aeronautics and Space Administration (NASA-OPM), (d) Nuclear Regulatory Commission (NRC-OPM), (e) U.S. Arms Control and Disarmament Agency (ACDA-OPM), and (f) U.S. Information Agency (USIA-OPM), and are covered under Public Law 298 and other public laws when an allegation has been received regarding the applicant's loyalty to the Government. Referrals are handled on a headquarters level only. Upon receipt of a referral, FBIHQ forwards it to the Office of the General Counsel of the Department of Justice, where a determination is made as to whether the referral falls within the guidelines of EO 10450. If a request from another agency is received on the field level, the requesting agency should be informed that these investigations are initiated and correlated at FBIHQ and the request must be at the headquarters level. Conduct no investigation in absence of FBIHQ approval. FBIHQ will advise the field concerning the scope of these investigations. | (See MIOG, Part I, 151-1.) |

(2) If substantive information described in Section 8(d) of EO 10450 is received from complainant, or is located in office files, or is developed during other investigation, include such information in LHM to FBIHQ for dissemination to OPM or interested agency in event they desire FBI full field investigation.

(3) If derogatory information requiring no FBI investigation is received (Section 8(a) (1) of EO 10450), submit LHM to FBIHQ suitable for dissemination and also consider local dissemination to concerned agency.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 140 - 2

EFFECTIVE: 09/09/94

140-1.1 Preliminary Inquiries

When a Name Check received at FBIHQ from OPM or other Government agency, and identity of individual with same or similar name cannot be resolved from information available in FBIHQ files, a preliminary inquiry is ordered by FBIHQ. This will consist of checking field offices' files and in some cases employment or police records in an effort to determine identity and significance of available information.

EFFECTIVE: 04/19/91

140-1.2 Interviews

If asked why individual is being investigated in OPM security referral case, state that under an EO Government employees or applicants are checked as part of the Federal employee security program. Mr., Mrs., Miss, or Ms. _____ is being checked under this program.

EFFECTIVE: 04/19/91

140-1.3 Dissemination of Reports

If a request is received in the field for copies of OPM security referral reports, advise that these investigations are supervised and correlated at FBIHQ and such requests should be directed to FBIHQ. NO LOCAL DISSEMINATION OF THESE REPORTS SHOULD BE MADE.

EFFECTIVE: 04/19/91

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 140 - 3

140-1.4 Full Field Investigations of Army, Navy and Air Force
Civilian Personnel

(1) At inception of investigation, appropriate office should notify intelligence representative of interested department that investigation is being conducted by FBI under EO 10450. However, no local dissemination of reports or investigative results should be made without prior specific FBIHQ approval.

(2) Notification may be in any form most convenient to field office.

(3) Office file must show notification given and what information furnished.

EFFECTIVE: 04/19/91

140-2 | GENERAL INSTRUCTIONS REGARDING SUITABILITY REFERRAL
INVESTIGATION (140B)

A second group of investigations in this category also stems from referrals from OPM or other Government agencies wherein a suitability background investigation is being requested concerning key employees. No question or allegation of the applicant's or employee's loyalty to the Government has surfaced.

These instructions supplement those contained in Part II, Section 17 of this manual.

EFFECTIVE: 04/19/91

140-3 | SUBDIVIDED CLASSIFICATIONS

(1) 140A - Office of Personnel Management - Referral (Key Government Employees)

(2) 140B - Office of Personnel Management - Employees (Key OPM or Government Employees)

(3) 140C - Office of Personnel Management - Other (Other Government Employees)

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 140 - 4

EFFECTIVE: 04/19/91

140-4 | PRIVACY ACT - REQUIREMENTS

(1) When interviewing individuals under this classification for information concerning themselves or their activities, the interviewing Agent must follow the procedures described in Part I, 190-5 (2) and (3) of this manual.

(2) When interviewing an individual to solicit information concerning someone other than the interviewee (thereby classifying that individual as a source of information), the interviewing Agent must follow the procedure relating to promises of confidentiality as described in Part I, 190-7 of this manual.

EFFECTIVE: 04/19/91

140-5 | CHARACTER - | OFFICE OF PERSONNEL MANAGEMENT - REFERRAL; -
EMPLOYEES; - OTHER |

EFFECTIVE: 04/19/91

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 141 - 1

SECTION 141. FALSE ENTRIES IN RECORDS OF INTERSTATE CARRIERS

141-1 STATUTES

Title 47, USC, Section 220(e); Title 49, USC, Section
20(7)(b); Title 49, USC, Section 20(7)(f)

EFFECTIVE: 06/26/91

141-1.1 Title 47, Section 220(e)

Violations by employees of telephone, telegraph and radio
companies

EFFECTIVE: 06/26/91

141-1.1.1 Elements

"Any person who shall willfully make any false entry in
the accounts of any book of accounts or in any record or memoranda
kept by any such carrier, or who shall willfully destroy, mutilate,
alter, or by any other means or device falsify any such account,
record, or memoranda, or who shall willfully neglect or fail to make
full, true, and correct entries in such accounts, records, or
memoranda of all facts and transactions appertaining to the business
of the carrier . . ."

EFFECTIVE: 06/26/91

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 141 - 2

141-1.1.2 Other Provisions

| (1) | The carriers covered are telephone, telegraph, and radio companies engaged as common carriers for hire in interstate or foreign commerce; those engaged in radio broadcasting are not deemed to be common carriers. Title 47, USC, Section 153(h).

| (2) | Jurisdiction over violations by the carriers to contravene provisions of this section rests with the Federal Communications Commission.

| (3) | The Bureau has investigative jurisdiction only over violations by employees who attempt to defraud the employing carriers.

| (4) | Note that this statute defines the violation as a misdemeanor.

EFFECTIVE: 06/26/91

141-1.1.3 Investigative Procedure

These cases will arise out of embezzlements by employees of the interstate carriers who attempt to conceal their shortages by failing to record transactions, reporting them falsely, or by destroying records. The exact nature of the records used by the carriers should be ascertained in order that the Special Agent can properly show where entries are false. Some of these cases may require the services of an accountant, as it may be necessary to examine the records in a manner similar to that used in the Financial Institution Fraud cases.

EFFECTIVE: 06/26/91

141-1.1.4 Policy

If prosecution has already been initiated in the state courts for embezzlement or similar offenses, the investigation should be held in abeyance pending a decision of the USA as to whether he/she will authorize prosecution in Federal court.

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 141 - 3

EFFECTIVE: 06/26/91

141-1.2 Title 49, Section 20(7)(b)

Violations by employees of railroads, etc.

EFFECTIVE: 06/26/91

141-1.2.1 Elements

"Any person who shall knowingly and willfully make, cause to be made, or participate in the making of, any false entry in any annual or other report required under this section to be filed, or in the accounts of any book of accounts or in any records or memoranda kept by a carrier, or required under this section to be kept by a lessor or other person, or who shall knowingly and willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such accounts, records, or memoranda, or who shall knowingly and willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, lessor, or person, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Commission with respect thereto, or shall knowingly or willfully file with the Commission any false report or other document..."

EFFECTIVE: 01/31/78

141-1.2.2 Other Provisions

The carriers covered are railroads, pipeline companies, express companies, sleeping car companies, and suburban electric lines. Such carriers must be engaged in interstate commerce to come within the paragraph. The paragraph does not cover water or steamship lines, motor freight lines, or bus companies. It is contemplated that few cases will come to the Bureau's attention except those arising out of irregularities by employees of railroads.

Note that this statute defines the violation as a misdemeanor.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 141 - 4

EFFECTIVE: 01/31/78

141-1.3 Title 49, Section 20(7)(f)

Violations by special agents, accountants, or examiners of
Interstate Commerce Commission

EFFECTIVE: 01/31/78

141-1.3.1 Elements

"Any special agent, accountant, or examiner who knowingly
and willfully divulges any fact or information which may come to his
knowledge during the course of any examination or inspection made
under authority of this section, except insofar as he may be directed
by the Commission or by a court of judge thereof . . ."

EFFECTIVE: 01/31/78

141-1.3.2 Other Provisions

Very few cases will arise concerning violations of this
particular subsection. However, since the Criminal Division of the
Department has advised that this subsection is within the Bureau's
jurisdiction, the pertinent subsection is quoted above. Note that
subsections a, c, d, and e of Section 20(7) are not within the
Bureau's jurisdiction.

According to the Antitrust Division of the Department, the
words "any special agent, accountant, or examiner" refer to agents,
accountants, or examiners in the employ of the Interstate Commerce
Commission.

Note that this statute defines the violation as a
misdemeanor.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 141 - 5

EFFECTIVE: 01/31/78

141-2 PENALTIES

(1) Title 47, Section 220(e) - A fine of not less than \$1,000 nor more than \$5,000 or imprisonment for a term of not less than one year nor more than three years, or both (misdemeanor).

(2) Title 49, Section 20(7)(b) - A fine of not more than \$5,000 or imprisonment for not more than two years, or both (misdemeanor).

(3) Title 49, Section 20(7)(f) - A fine of not more than \$500 or imprisonment for not exceeding six months or both (misdemeanor).

EFFECTIVE: 01/31/78

141-3 CHARACTER - FALSE ENTRIES IN RECORDS OF INTERSTATE CARRIERS (FERIC)

EFFECTIVE: 01/31/78

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 142 - 1

SECTION 142. ILLEGAL USE OF RAILROAD PASS

142-1 STATUTE

Title 49, USC, Section 1 (7)

EFFECTIVE: 01/31/78

142-1.1 Elements

Free transportation for passengers prohibited; exceptions:

"No common carrier subject to the provisions of this chapter, shall, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees, its officers, time inspectors, surgeons, physicians, and attorneys at law, and the families of any of the foregoing; to the executive officers, general chairmen, and counsel of employees' organizations when such organizations are authorized and designated to represent employees in accordance with the provisions of the Railway Labor Act;" (Sections 151-163 and 181-188 of Title 45) "to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail-service employees and persons in charge of the mails when on duty and traveling to and from duty, and all duly accredited agents and officers of the U. S. Postal Service and the Railway Mail Service and postal inspectors while traveling on official business, upon the exhibition of their credentials; to customs inspectors, and immigration officers; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: Provided, that this provision shall not be

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 142 - 2

construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: And provided further, that this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this chapter: Provided further, that the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso; also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died, while in the service of any such common carrier."

EFFECTIVE: 01/31/78

142-1.1.1 Other Provisions

"Jurisdiction of offenses under this provision shall be the same as that provided for offenses in Sections 41, 42, and 43 of Chapter 2 of this Title."

Venue: "Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein."

Violations of the above statute come within the Bureau's primary investigative jurisdiction.

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 142 - 3

EFFECTIVE: 01/31/78

142-1.1.2 Investigative Procedure

Most violations of this nature are brought to the attention of the Bureau by special agents of the various railroads. Usually these individuals have made a complete investigation of the alleged violation and are in possession of all pertinent facts. Accordingly, much investigative effort can be eliminated by contacting these officials early in the course of the investigation and obtaining the available data they have compiled.

EFFECTIVE: 01/31/78

142-2 PENALTIES

Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than \$100 nor more than \$2,000, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty.

EFFECTIVE: 01/31/78

142-3 CHARACTER - ILLEGAL USE OF A RAILROAD PASS

EFFECTIVE: 01/31/78

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 1

SECTION 143. INTERSTATE TRANSPORTATION OF GAMBLING DEVICES

143-1 STATUTES

Title 15, USC, Sections 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180. Effective date of this legislation was originally 1-2-51 and further amended effective 12-17-62 following passage of the "Gambling Devices Act of 1962" (Public Law 87-840).

EFFECTIVE: 01/31/78

143-1.1 Section 1171 Definitions

"As used in this chapter--

"(a) The term 'gambling device' means--

"(1) any so-called 'slot machine' or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

"(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

"(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

"(b) The term 'State' includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 2

"(c) The term 'Possession of the United States' means any Possession of the United States which is not named in paragraph (b) of this section.

"(d) The term 'interstate or foreign commerce' means commerce (1) between any State or Possession of the United States and any place outside of such State or Possession, or (2) between points in the same State or Possession of the United States but through any place outside thereof.

(e) The term 'intrastate commerce' means commerce wholly within one State or Possession of the United States."

EFFECTIVE: 01/31/78

143-1.2 Section 1172 - Transportation of Gambling Devices as Unlawful; Exceptions; Authority of Federal Trade Commission

"It shall be unlawful knowingly to transport any gambling device to any place in a State, the District of Columbia, or a Possession of the United States from any place outside of such State, the District of Columbia, or Possession: Provided, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to any licensed gambling establishments where betting is legal under applicable State laws" (Nevada and New Jersey are the only states which have so exempted themselves):| "Provided further, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State. "Nothing in this Act shall be construed to interfere with or reduce the authority, or the existing interpretations of the authority, of the Federal Trade Commission under the Federal Trade Commission Act, as amended (15 USC 41-58)."

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 3

EFFECTIVE: 06/10/88

143-1.3 Section 1173 - Registration of Manufacturers and Dealers; Numbering Devices; Maintenance of Records; Transfer or Possession of Unnumbered Devices; Alteration of Numbers or Marks on Devices; False Entries; Inspection and Access to Records

"(a) (1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

"(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

"(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

"(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his place of business in any State or possession of the United States, (C) the address of a place of business in any State or Possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines

Part I

PAGE 143 - 4

by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

"(b) (1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

"(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of the first section of this Act shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

"(c) (1) Every person required to register under subsection (a) of this section or any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of-- "(A) each gambling device manufactured, purchased, or otherwise acquired by him, "(B) each gambling device owned or possessed by him acquired or in his custody, and "(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

"(2) Such record shall show-- "(A) in the case of each such gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act, the information which is required to be affixed on such gambling device by subsection (b)(1) of this section; and "(B) in the case of each gambling device defined in paragraph (a)(3) of the first section of this Act, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location. "Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 5

and the name and address of the carrier.

"(d) Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

"(e) (1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

"(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

"(f) Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the U.S. district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

EFFECTIVE: 06/10/88

143-1.4 Section 1174 - Labeling and Marking of Shipping Packages

"All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package."

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 6

EFFECTIVE: 01/31/78

143-1.5 Section 1175 - Specific Jurisdiction in which
Manufacturing, Selling, Repairing, etc., Prohibited

"It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any Possession of the United States, within Indian country as defined in Section 1151 of Title 18 (of the USC) or within the special maritime and territorial jurisdiction of the United States as defined in Section 7 of Title 18 (of the USC.)"

EFFECTIVE: 01/31/78

143-1.6 Section 1176 Penalties

"Whoever violates any of the provisions of Sections 1172, 1173, 1174 or 1175 of this Act shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

EFFECTIVE: 01/31/78

143-1.7 Section 1177 - Confiscation of Gambling Devices and Means
of Transportation; Laws Governing

"Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this Act shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable and not inconsistent with the provisions hereof: Provided, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure

Sensitive
PRINTED: 02/18/98

Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 7

and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws be performed with respect to seizures and forfeitures of gambling devices under this Act by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General."

EFFECTIVE: 01/31/78

143-1.8 Section 1178 Separability of Provisions

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

EFFECTIVE: 01/31/78

143-1.9 Section 1179 Exceptions

"None of the provisions of this Act shall be construed to apply--

"(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting:

"(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

"(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or state fairs."

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Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 8

EFFECTIVE: 01/31/78

143-1.10 Section 1180 Effective Date

"The amendments made by this Act shall take effect on the sixtieth day after the date of its enactment." (December 17, 1962)

EFFECTIVE: 01/31/78

143-2 ELEMENTS

EFFECTIVE: 01/31/78

143-2.1 Section 1172

(1) A gambling device covered by the Act, subassembly, or essential part thereof is transported into any state, District of Columbia, or possession of the U.S.

(2) The state has not exempted itself from provisions of this act and this section does not apply to any gambling device transported to any licensed gambling establishments where betting is legal under applicable state law, or

(3) The state in which the gambling device is transported in interstate or foreign commerce has specifically enumerated as lawful by state statute the gambling device so transported.

EFFECTIVE: 01/31/78

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 9

143-2.2 Section 1173

(1) Failure of manufacturer to register with the Attorney General.

(2) Failure during any calendar year of any person engaged in business of repairing, reconditioning, buying, selling, leasing, or using gambling devices to register with the Attorney General if he sells, ships, delivers, buys, or receives such device knowing it will be introduced into interstate or foreign commerce.

(3) Failure of person required to register to set forth -

(a) His name and each trade name under which he does business.

(b) Address of each place of business in any state.

(c) The address of where he will keep all records required to be kept by Section 1173.

(d) Each activity he intends to engage in during the calendar year.

(4) Failure of manufacturer to number seriatim each gambling device so manufactured and permanently affix on each device such number, his name, trade name if different, and date of manufacture.

(5) Failure of any person engaged in business of repairing, reconditioning, buying, selling, leasing, or using any gambling device to number seriatim each gambling device and permanently affix on each device such number, his name, trade name if different, and date of manufacture.

(6) Failure of every person required to register to maintain record by calendar month of -

(a) Each gambling device manufactured, purchased, or acquired.

(b) Each gambling device owned, possessed, or in [his/her] custody.

(c) Each gambling device sold, delivered, or shipped in intrastate, interstate, or foreign commerce.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 10

(7) Failure to maintain records required to be maintained at the required location for a period of five years.

(8) Unlawful for person required to be registered to sell, deliver, or ship in intrastate, interstate, or foreign commerce, or have in custody any gambling device which is not marked and numbered as required or to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon.

(9) Unlawful to make or cause to be made any false entry in any record required to be kept under this Section.

EFFECTIVE: 06/18/87

143-2.3 Section 1174

(1) To ship or transport any gambling device.

(2) The gambling device or package containing the device is not clearly labeled or marked showing the name and address of the shipper and consignee and nature of the article or the contents of the package from an inspection of the outside of the package.

EFFECTIVE: 06/18/87

143-2.4 Section 1175

(1) To manufacture, recondition, repair, sell, transport, possess, or use any gambling device.

(2) In the District of Columbia, in any possession of the U.S., within Indian country, or within the special maritime and territorial jurisdiction of the U.S.

EFFECTIVE: 06/18/87

Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 11

143-2.5 Section 1177

(1) A gambling device may be seized if this device is transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the statute.

(2) The seized gambling device shall be forfeited to the U.S.

(3) The FBI has been delegated authority to institute civil administrative forfeiture proceedings pursuant to Section 1177. The Forfeiture and Abandoned Property manual contains the step-by-step procedure to be followed for seizures and civil forfeiture proceedings (judicial and administrative) conducted in conjunction with this violation.

EFFECTIVE: 06/18/87

143-3 EXCEPTIONS

Section 1179 sets forth exceptions concerning certain machines or mechanical devices which are exempted from provisions of this Act.

EFFECTIVE: 06/18/87

143-4 INSPECTION OF RECORDS

Section 1173 authorizes that Agents of the FBI shall at all reasonable times have access to and the right to copy any of the records kept by a person required to register. In case of refusal of any person so registered to allow inspection in copying such records, the U.S. district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

EFFECTIVE: 10/16/90

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 12

143-5 POLICY

(1) Section 1177 of the statute provides that gambling devices transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of the Act shall be seized and forfeited to the U.S. This wording of the statute makes it mandatory that these gambling devices be seized; however, as a matter of policy the facts of each case should be discussed with the USA for his/her opinion and authorization for the seizure of the gambling devices.

(2) Deleted

(3) Gambling devices on board foreign vessels entering U.S. ports constitute a violation of Title 18, USC, Section 1172. The Department has requested that any violation developed on the part of foreign ships be presented to it for an opinion as to prosecution prior to the seizing of any gambling devices. Any violations developed in this regard should be immediately referred to FBIHQ for presentation to the Department for a decision.

(4) Leads to check the records of the Attorney General to determine if a person required to be registered is so registered in accordance with the provisions of Public Law 87-840 should be set out for the Washington|Metropolitan|Field Office.

(5) When investigations indicate a possible violation of Section 1173 (registration section), the facts should be presented to the USA as early as possible to determine if the activity of the individual or company involved would fall within the purview of the registration section of the statute.

(6) Gambling wheels (a device sometimes known as a wheel of fortune), commonly utilized at fairs and carnivals, are designed primarily for use in connection with gambling. The interstate transportation of such devices would be in violation of Title 15, USC, Sections 1171-1180. When complaints are received concerning gambling wheels, develop the facts and promptly contact the USA for his/her prosecutive opinion.

(7) Any information developed concerning the existence of gambling devices which are not in violation of the interstate transportation of gambling devices statute but whose existence may constitute a violation of state law should be referred to responsible local authorities having jurisdiction.

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Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 13

(8) The interstate transportation of gambling devices statute (Public Law 906, 81st Congress), when mentioned in responding to press inquiries or in making press releases, should be described as the Johnson-Preston Act.

EFFECTIVE: 10/16/90

143-6 INVESTIGATIVE PROCEDURE

(1) The development and utilization of adequate confidential informants and sources of information coverage is essential to the development of cases in this category.

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(1) (2) The appearance of gambling devices in an area or any noticeable increase in the prevalence of these machines should be made the subject of an immediate investigation to determine if a violation of the act has occurred in connection with these devices.

(3)

(4) Title 15, USC, Section 1172, specifies that it shall not be unlawful under this section to transport in interstate or foreign commerce any gambling device into any state in which the transported gambling device is specifically enumerated as lawful in a statute of that state. Each office must be fully aware of state statutes applicable to gambling as they relate to definitions of gambling devices which are lawful under the state law. The office having within its territory the state capital is responsible for following this matter and in those instances in which a state is covered by more than one field office coordinating the results with other offices having jurisdiction within the state. FBIHQ should also be advised of any changes in state statutes which would make specific gambling devices lawful under state statutes.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 14

143-7 VENUE

(1) The Department has advised that venue for failure to register would in all probability be in the District of Columbia. When omission to act constitutes a crime, the venue is the jurisdictional locality where the act should have been performed.

(2) Where the offense consists of the failure to file a document, it is committed in the place where the document should have been filed, and not elsewhere.

(3) The Department has further advised concerning venue that the failure to register may be prosecuted in any district in which the person required to be registered committed any act in violation of the statute, such as transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, bought, leased, or used. Prosecution may be entertained for transporting gambling devices in any district from which the devices were transported, through which they were transported, or into which they were transported in violation of the statute.

EFFECTIVE: 10/18/88

143-8 | REPORTING PROCEDURES

(1) In 143A cases involving LCN members and/or associates, or 143B cases involving other organized crime groups (i.e., Asian organized crime, Sicilian-Mafia, etc.), submit an airtel to FBIHQ within 60 days of opening the case. This communication should include facts predicating the case and sufficient identification data on the subject(s) for indexing purposes.

(2) A progress letter should be submitted every 180 days restating the predication and summary of the investigation.

(3) The results and/or summary of investigation should be reported by airtel.

(4) In 143C cases, no reporting to FBIHQ is required. |

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 143 - 15

||143-9| CHARACTER - INTERSTATE TRANSPORTATION OF GAMBLING DEVICES

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Sensitive
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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 144 - 1

SECTION 144. INTERSTATE TRANSPORTATION OF LOTTERY TICKETS

144-1 STATUTE

Title 18, USC, Section 1301

EFFECTIVE: 01/31/78

144-1.1 Section 1301. Importing or Transporting Lottery Tickets

"Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined not more than \$1,000 or imprisoned not more than two years, or both."

Note: Punishment provision was rewritten to eliminate reference to punishment under the former section for a second offense.

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Sensitive

Manual of Investigative Operations and Guidelines
Part I

PAGE 144 - 2

144-2 VIOLATIONS

(1) Bringing into or causing to be brought into the U.S. any lottery ticket, advertisement of, or list of prizes drawn or awarded by means of such lottery.

(2) Knowingly depositing or causing to be deposited with any express company or other common carrier any such lottery ticket, advertisement, or list of prizes for carriage in interstate or foreign commerce.

(3) Carrying any such lottery ticket, advertisement, or list of prizes in interstate or foreign commerce.

(4) Knowingly taking or receiving or causing to be taken or received any lottery ticket, advertisement, or list of prizes which have been so brought, deposited, or transported as outlined above.

The word "carries" contained in (Title 18, USC, Section 1301) in effect makes the interstate or foreign transportation of lottery tickets by any means whatsoever a criminal violation. The terms "interstate commerce" and "foreign commerce" are defined in Title 18, USC, Section 10.

EFFECTIVE: 01/31/78

144-3 JURISDICTION

(1) Title 18, USC, Section 1301, is within the investigative jurisdiction of the Bureau. Title 18, USC, Section 1302, is within the investigative jurisdiction of the U.S. Postal Service.

(2) Section 1305 of Title 19, USC, which is included in the Tariff Act of 1930, also prohibits the importation of lottery tickets into the U.S. Violations of Section 1305 are within the jurisdiction of Customs authorities.

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